

120WBRIDGE

AMERICANS MISSING IN SOUTHEAST ASIA

HEARINGS

BEFORE THE

HOUSE SELECT COMMITTEE ON MISSING PERSONS IN SOUTHEAST ASIA

NINETY-FOURTH CONGRESS

SECOND SESSION

PART 4

APRIL 7, MAY 12, 26, AND JUNE 2

Printed for the use of the
Select Committee on Missing Persons in Southeast Asia



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SELECT COMMITTEE ON MISSING PERSONS IN SOUTHEAST ASIA

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The purpose of this Select Committee is to conduct a full and complete investigation and study of (1) the problem of United States servicemen still identified as missing in action, as well as those known dead whose bodies have not been recovered, as a result of military operations in North Vietnam, South Vietnam, Laos and Cambodia and the problem of United States civilians identified as missing or unaccounted for, as well as those known dead whose bodies have not been recovered in North Vietnam, South Vietnam, Laos, and Cambodia; (2) the need for additional international inspection teams to determine whether there are servicemen still held as prisoners of war or civilians held captive or unwillingly detained in the aforementioned areas.

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HOUSE SELECT COMMITTEE ON MISSING PERSONS IN SOUTHEAST ASIA

WEDNESDAY, APRIL 7, 1976

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON MISSING
PERSONS IN SOUTHEAST ASIA,
Washington, D.C.

The committee met at 9:10 a.m. in room 334, Cannon House Office Building, the Honorable G. V. Montgomery, chairman of the committee, presiding.

Present: Representatives Montgomery, Ottinger, Harkin, Lloyd, and Gilman.

Also present: J. Angus MacDonald, staff director; Jeanne Shirkey, administrative assistant; Dr. Henry Kenny, Dr. Job Dittberner, and John Burke, professional staff assistants.

The CHAIRMAN. The committee will come to order. We received a telephone call from the First Secretary of the North Vietnamese Embassy in Paris, Mr. Do Thanh, last Friday with a message from Hanoi. In short, the message was they could not receive the members of our American Committee in Hanoi at the end of April since they had a special program planned for that time. It is our understanding that the special program is the elections in North and South Vietnam for the unity of Vietnam.

Our first witness today is Ms. Anita Lauve.

Ms. Lauve has been a student of Vietnamese affairs for more than two decades. She has served in Vietnam as a Foreign Service Officer from 1954-56, and has been a Rand consultant since 1961.

Ms. Lauve has published major studies on French POW/MIA experiences arising from the French-Indochina War. She is recognized as an expert on the whole range of issues surrounding French attempts, since 1954, to gain an accounting for their missing, and repatriation of the remains of those who died in Vietnam. For the past 3 weeks she has been acting as a consultant for the select committee, and we are very pleased to have her as one of our consultants.

Ms. Lauve, we appreciate your service very much in working with us, and we would now like to hear your testimony, and then we would like to ask questions.

STATEMENT OF MS. ANITA LAUVE

Ms. LAUVE. Thank you, Mr. Chairman, and members of the select committee. I am very pleased to appear before you today and hope that my testimony will assist you in the difficult task in which you are involved.

My presentation will examine the highlights of the French experience in Indochina in recovering their prisoners of war, in obtaining an accounting of the missing in action, and in recovering and repatriating the remains of their men who died in combat or in captivity. For this purpose, I ask the permission of the select committee to introduce supporting documents for the record, and I would like to mention that much of the research for these documents was undertaken during the 1960's and early 1970's when I was working as a Rand consultant.

The CHAIRMAN: Without objection, so ordered.¹

Ms. LAUVE. Before examining the French experience, it would seem useful to consider some of the major differences and similarities between the French war and the American war in Vietnam. The areas of combat and the type of warfare, the composition of the armed forces, the bargaining power of the adversaries and their dissimilar set of values, were all factors that affected, in one way or another, the numbers of killed in action, missing in action, prisoners of war, died in captivity, and bodies recovered.

Some of those factors also contributed to the substantial difference between the ability of the French and the U.S. commands to account for their respective casualties.

In both the French and the American war, the fighting was a combination of guerrilla and conventional warfare; however, the emphasis on each and the level of combat differed significantly.

Although guerrilla warfare predominated initially in both conflicts, American forces tended to engage in brief forays from which they were usually able to recover their wounded and dead before returning to their base. The French, on the other hand, often operated for long periods far behind enemy lines in the central plateau regions and near the China border, where many mobile commando groups were trapped by the cease-fire.

Fighting in the French war was predominately ground combat. It ranged from the China border to the southern tip of Vietnam and into Laos and Cambodia. Though the troops had air support, it was insufficient even by the standards of the day, and certainly the French had none of the sophisticated means of preventing capture, of insuring early retrieval of the wounded and the recovery of the dead that U.S. forces later possessed.

In the American conflict, guerrilla fighting was rapidly overshadowed by conventional warfare as both sides introduced larger numbers of conventional forces and weapons into South Vietnam.

Because there were far more American nationals fighting in the American war than there were French nationals fighting in their war, the number of Americans killed in action was about four times that of the French. The number of Americans missing in action was, however, a third less. This may be attributed in part to the fact that American ground troops were operating in a much smaller area of Indochina than were the French, and, as mentioned earlier, enjoyed superior airpower. But the much higher figure of French missing in action was primarily due to the lack of knowledge concerning the fate of hundreds of their prisoners of war held in remote, primitive camps in North Vietnam and Laos. A French officer, 4 years a captive in

one such camp near the China border, told me that 50 to 70 percent of the prisoners died in the camp, or after the cease-fire during what proved to be a 600-kilometer death march to the point of release.

About a year after the 1954 cease-fire, over 21,000 men of all nationalities in the French union ground forces were listed as "missing or failed to return from captivity." There seemed to be less uncertainty about the fate of 380 Air Force personnel who were described as having "died of wounds or disease or missing, presumed dead."¹ There was no assumption—as there was with respect to missing ground personnel—that Air Force personnel might also simply have failed to return from captivity.

Here, of course, the French had a decided advantage over the Americans in attempting to account for their Air Force personnel missing in North Vietnam, for throughout their war the French had ground, air, and naval forces in North Vietnam, and many friendly native contacts. Furthermore, they were able to remain in North Vietnam for 300 days after the cease-fire. Consequently, they had opportunities to rescue the crews of planes downed during the war, obtain information about the fate of those who might have been captured, and recover the remains of at least some of the deceased.

By contrast, the Americans had no ground presence in North Vietnam during the war and could expect no friendly assistance from the inhabitants. As a result, the largest category of Americans currently missing in Vietnam consists of air personnel lost over North Vietnam.

Inasmuch as the United States must now rely solely on the willingness of the North Vietnamese Government to account for the missing and recover the remains of Americans who died in North Vietnam, it therefore seems relevant to examine North Vietnam's record in implementing the terms of the Geneva Agreement of 1954 with regard to the release of prisoners, accounting for the missing, and facilitating the repatriation of the remains of the deceased.

By September 9, 1954, the deadline for the release of all prisoners in Vietnam, the North Vietnamese had returned about one-third of the prisoners of war claimed by the French.

About 6 weeks later—after all French forces had withdrawn from Hanoi—the French reduced their initial POW claims from over 30,000 to under 23,000, possibly for two reasons: (1) new information provided by returning prisoners concerning a number of those previously unaccounted for, and (2) recognition of the fact that many troops of North Vietnamese origin, who had been fighting with the French forces, had defected to the Viet Minh, while others had gone AWOL to help their families in North Vietnam join the growing tide of refugees heading for South Vietnam.

By the end of 1954, the French command had received 13,300 prisoners of war, but accused the North Vietnamese of withholding 9,500. I am using round figures here.

Although the North Vietnamese denied at the time holding any prisoners of war, during the next 2 years they turned over to the French command 3 groups of alleged ralliers totaling 380 men. I should point out that a "rallier" was a term used by the North Viet-

¹ This information is from a list of casualties from the French war that appeared in a 1955 report prepared by the French High Command in Indochina.

names to describe a detector from the other side, who had allegedly rallied to their side. They drew a marked distinction between POW's and ralliers.¹

During these same 2 years after the cease fire, North Vietnamese troops escorted 3 groups of foreign legionnaires—over 450 men—across the China border, under the eyes of the International Commission for Supervision and Control in Vietnam, to be repatriated, via the U.S.S.R., to central and Eastern European countries then under Communist control.

The above figures appear in the published reports of the International Control Commission.

Reliable Western sources in North Vietnam at the time reported that North Vietnamese troops also escorted hundreds of legionnaires across the China border without notifying the International Control Commission or the French High Command, to whom all French Union prisoners should have been released, according to the Geneva agreement.

It should be noted that the 1973 Paris Peace accords specifically stated that even those POW's who had been tried and sentenced as criminals were to be returned. I understand that the U.S. Government has no evidence that any Americans are being held by the North Vietnamese in a war criminal status, but that there are at least two known cases of Americans who defected to the North Vietnamese who may still be alive. These cases were mentioned by Gen. Vernon Walters of the CIA, in his testimony before the select committee.

During the 1960's and early 1970's, the North Vietnamese released several hundred North African prisoners, and well over 100 European foreign legionnaires—notably Spaniards and Italians—who were repatriated to their countries of origin. Whether these men had remained in North Vietnam voluntarily is not known, but in some instances there were indications to the contrary.

It is important to note that the legionnaires were not Frenchmen, but rather were Europeans of other ethnic origin. There is no parallel in the American experience.

The only French nationals from Metropolitan France who are known to have been belatedly returned to French authorities, were 40 enlisted men who were released in 1962 and flown to France with their Vietnamese families. Some, if not all of the men, were reportedly tried in France as deserters.

Over the years, the French continued to try and obtain information from Hanoi about the fate of their missing personnel.² In the late 1960's, in response to a query from a member of the French legislative branch, the responsible French Government agency reported that previous search requests addressed to the Government of North Vietnam had produced no results because the North Vietnamese replied, in every case, that all prisoners of war had been liberated in implementation of clauses of the Geneva agreement, and those who were missing, or who did not appear as "ralliers," should be considered "killed in combat, or deceased as a result of injuries received in combat."

¹ The French and the International Commission made a distinction between POW's, ralliers, and deserters.

² In 1964, French nationals unaccounted for totaled 6,801, of whom 2,350 were POW's not returned, and 4,451 were MIA's.

In June 1971, the French Foreign Minister, responding to a question in the National Assembly, asserted that statements according to which a certain number of French prisoners of war were held by the Government of the Democratic Republic of Vietnam, after execution of the Geneva accords of 1954, did not correspond to the French Government's information. He further stated that to the Government's knowledge, there were, as a matter of fact, no members of the French Far East Expeditionary Corps, held "against their will in North Vietnam."

These two official statements would seem to indicate that the question of prisoners-of-war is a closed issue insofar as the French Government and the North Vietnamese Government are concerned.

But not so the question of search and recovery, and repatriation of the remains of French military personnel who died in North Vietnam. Based on published reports of widely spaced shipments of French remains to France, and on information gleaned over the years from non-French sources in Hanoi sympathetic to the French Government's dilemma, the question of the recovery of French remains is far from resolved.

I would like to note a major difference between the situation of the French and the Americans with regard to the search-and-recovery operations in North Vietnam. The Americans were not present in North Vietnam during or after their war. The fact that French civilians and military personnel were in North Vietnam throughout their war enabled them to bury most of their dead in cemeteries—except those who died at Dien Bien Phu, in remote areas, in the prison camps, or on the march to freedom. The French were thus aware of the burial sites of most of their deceased military personnel, whereas the Americans had no firsthand knowledge of burial sites and had no permanent cemeteries at all.

The common experiences that the French and Americans share are the inability to conduct search operations in North Vietnam—even the French are not presently involved in these operations—and the need to cope with the obvious intent of the Government of North Vietnam to make the return of remains of the deceased contingent upon substantial remuneration to North Vietnam.

A review of how the North Vietnamese have dealt with the French on the recovery and repatriation issue over the past 20 years, dispels any illusion that they have been motivated by humanitarian concern for the families of the deceased—their protestations to the contrary.

As indicated in the earlier portion of this presentation, both the Americans and the French know how the Government of North Vietnam implements mutual agreements on the release of prisoners. But to date, only the French have had substantial experience in how the North Vietnamese implement a mutual agreement specifically designed to cover search-and-recovery operations.

In view of the fact that North Vietnam does not need anyone's authorization to recover the bodies of its deceased military personnel located in South Vietnam, and in light of the mutual commitments already made by the Governments of the United States and the Democratic Republic of Vietnam in Article 8b of the 1973 Paris Peace Accords, there should be no need for an additional agreement such as the graves agreement that the French and North Vietnamese

signed in 1955. But in view of the continuing refusal of the North Vietnamese to fulfill their commitment with regard to the recovery and repatriation of the remains of Americans who died in North Vietnam, it may be of particular interest to examine their record in dealing with the French on this issue during the past 20 years.

The 1954 Geneva Agreement required the commander of the forces of each party to permit the graves service personnel of the other party to enter territory under his military control for the purpose of finding and removing the remains of their deceased military personnel—including the bodies of deceased prisoners of war. To fulfill this obligation, a military Central Joint Commission, representing the French and the North Vietnamese High Commands, formed a joint graves committee to negotiate the terms of a search-and-recovery agreement. Six months after the cease-fire, the committee's negotiations produced agreement 24. The text of this agreement will be made a part of the record.¹

Although I have not had access to the records of the negotiations that led to conclusion of the graves agreement, from all indications, the negotiations were at least as difficult as those that lead to conclusion of the three subsequent agreements on financial arrangements, costs, and shipping, that were necessary to implement the graves agreement.

Shortly after conclusion of the graves agreement, it was apparent that the objectives of the North Vietnamese in undertaking search-and-recovery operations in South Vietnam were totally different from the French objectives in undertaking similar operations in North Vietnam, and bore no relationship to the intent of the relevant article in the Geneva agreement.

For example, the manner in which the North Vietnamese submitted their search-requests to the French seemed clearly designed to make it extremely difficult for the French to locate the graves of North Vietnamese personnel buried in South Vietnam. If the French were unable to do so under the terms of the graves agreement, the North Vietnamese were entitled to send their own search teams into the South. The record of the negotiating in the joint graves committee—to which I have had access—reveals that Hanoi's objective was to send as many teams as possible into as many South Vietnamese provinces as possible during the year preceding the anticipated all-Vietnam elections.

Hanoi's political interest in the graves operation was further revealed when some of the officers in charge of the North Vietnamese search-and-recovery teams proved to be former high-ranking South Vietnamese Communist political cadres who had gone North either before the cease-fire, or during the 300-day military regroupment period after the cease-fire. These officers proved to be more interested in reestablishing contact with local Viet Minh elements in the South than in recovering and repatriating the remains of their deceased whose graves had been located. In fact, when the French pointed out that they had located 30 percent of the graves on North Vietnam's list, the North Vietnamese, having long complained because their teams had been unable to begin disinterments in the South as early as the

French had in the North, then announced that they would not begin any disinterments until all graves had been located throughout South Vietnam.

Taking this position meant that North Vietnamese search teams would first be able to circulate in South Vietnam for several months to locate graves; then, under the terms of agreement 24, their disinterment commissions could visit the same provinces to determine what should be done about each grave; and finally a third visit to the same areas could be made by their visit commissions to ascertain whether the French had completed the agreed work on the North Vietnamese graves.

In contrast to North Vietnam's use of graves operations in South Vietnam for political purposes, French operations in North Vietnam were directed solely toward the recovery, identification, regrouping, and repatriation of remains. Except for the mass burials at Dien Bien Phu graves located near remote prisoner-of-war camps, and the many graves dotting the route of the death march to freedom, the great majority of French graves were in well-defined temporary or permanent French cemeteries, where most graves could readily be identified.

The North Vietnamese had a special interest in the French graves operations in the North, but it became apparent during the negotiations that this special interest was not of a humanitarian nature. It was evident in the 1955 sessions of the joint graves committee that the Government of North Vietnam saw the possibility of financially benefiting from the French graves operations.

During the years that have followed, it has become painfully evident that the program for the recovery of the remains of French military personnel buried in North Vietnam has become a long-term source of income for the Government of the Democratic Republic of Vietnam. Several reliable non-French sources have reported that conditions attached to continuation of the program, and the costs involved, have continued to escalate over the years in an unpredictable and unreasonable manner.

Precisely what these costs and conditions are, we do not know, because, as in the case of the French prisoners of war and missing in action, the French Government has chosen quiet diplomacy in its negotiations with the North Vietnamese in the hope of eventually achieving its goals.

What has been the record to date? During the first 6 months following signature of the graves agreement in 1955 the French were able to repatriate 150 bodies disinterred from existing French cemeteries in North Vietnam. But a year later, when the President of newly independent South Vietnam ordered all North Vietnamese search teams out of the South, because Hanoi rejected his repeated demands that the officers wear civilian dress, the North Vietnamese allowed French graves-personnel to continue operations in North Vietnam, but on an ever decreasing scale. Then in 1958, they expelled the last French officer connected with the graves search-and-recovery program, drastically reduced repatriations, and ended them in 1962.

Negotiations did not resume until 4 years later. In 1966, the French were permitted to resume outshipments of remains to France.¹ In ad-

¹ See p. 191.

¹ Since 1960, the annual rate of repatriations has varied from 307 in 1966 to 6 in 1972.

dition, they were able to regroup many bodies from small to larger cemeteries in or near Hanoi.

It should be noted that all bodies recovered and repatriated by the French had been buried by the French, in French cemeteries in North Vietnam. The locations of the remains were thus well-known to the French.

Also worth noting, is the fact that of all the bodies regrouped or repatriated, there was not one of those whom the French had listed as missing-in-action or died-in-captivity.

And finally worth noting is the fact that from 1954 to date, the French have maintained official relations with North Vietnam.

This is not an encouraging record, but it is the record.

That is all Mr. Chairman.

The CHAIRMAN. Thank you very much, Ms. Lauve.

Mr. Ottinger?

Mr. OTTINGER. Thank you very much for a very full and informative statement. We appreciate it.

What evidence do you have that the North Vietnamese were interested in the financial benefits that might accrue to them with respect to the French remains?

Ms. LAUVE. I don't have the records of the Joint Graves Committee negotiations before graves agreement 24 was signed. But I was able to see many, most I would say, of the verbatim texts of the committee's negotiations after the agreement was signed. The North Vietnamese showed constant concern about how much money the graves program was going to bring in. They tended to switch positions.

At first they insisted they be paid in the Bank of Indochina notes deposited in Hanoi. Simultaneously, financial and trade discussions were being held between the French Government representatives in Hanoi—the Sainteny mission—and North Vietnamese officials about such matters as coal exports from North Vietnam and what exchange currency would be used in trade between the two countries, and what machinery and equipment the French would leave behind when they withdrew. I think for the North Vietnamese these talks were tied to the graves discussions because in a few cases when they procrastinated they said, "Well, negotiations between our two governments are going on, so we will have to wait."

As a result of developments in the trade talks, they completely switched positions in the Joint Graves Committee. They asked to be paid in French francs deposited in a Paris bank to the account of the National Bank of Hungary.¹

In discussing payment for labor used to regroup remains the North Vietnamese wanted to be sure that every little thing was covered. If a disinterment commission was a little late, would the workers be paid?

If the workers took a rest period, would they be paid? If the bodies were shipped in trucks, it would cost so much per mile; but later, the price was changed to so much per mile per coffin. There were constant revisions of this type. Even after both sides had agreed firmly on a fixed, identical price scale for graves operations in North and South Vietnam, and had jointly drafted an agreement, the North Vietnamese stalled and stalled to avoid signing it. They wanted a

¹ For some years now the French have been paying in U.S. dollars for graves operations in North Vietnam.

complete change in the price scale for work undertaken for the French in North Vietnam, on the grounds that labor was paid more in the North than in the South, which, of course, wasn't the case. But the French finally agreed to revise the agreement. During that first year, agreements were constantly revised under pressure. Since then, there has been a lot of evidence that the French are really being financially milked pretty crudely.

Mr. OTTINGER. In the French experience, getting an accounting was a long, drawn out affair. A couple of questions:

Was it speeded up through normalization of relations when the French recognized Vietnam?

Ms. LAUVE. I don't think accounting ever changed, because none of the remains returned was of a former prisoner of war or missing in action. In fact, I don't think the French ever had access to the burial grounds near the prison camps. I am sure they didn't. These camps were in very remote areas, and the French were just never able to recover any of the bodies. I do not think that a resumption of the repatriation of remains in 1966 after a long period without any out-shipments was due to French recognition of North Vietnam because the French Government had consistently had official representation in Hanoi. However, from the early stages, the North Vietnamese very definitely wanted some kind of representation in France. The Sainteny Mission had been allowed to remain in Hanoi, and the North Vietnamese wanted reciprocal representation in France.

I think that this objective may have encouraged them, in the beginning, to return more bodies. What went on during the long period between 1958 and 1966, I really don't know. I do know that one of the men who went back and really got the North Vietnamese to resume negotiations, was, himself, a former prisoner. In fact, he was the man I referred to earlier who had been in the camp where 50 or 70 percent of the men had died.

He went back and helped conduct the negotiations. I talked to him in later years in Paris. Repatriations resumed shortly after conclusion of the negotiations, and the North Vietnamese allowed the French to send a new military graves mission to Hanoi.¹

Since 1972, there has been primarily a regroupment of remains, some from isolated graves, some from small cemeteries. That is about it. There were no remains repatriated that had not been in French cemeteries.

Mr. OTTINGER. From the French experience, what have we learned? How, do you think, we could accelerate the process?

Ms. LAUVE. If you want a frank answer, I think it's money.

Mr. OTTINGER. You think we probably would have to give aid. Do you think it can be done through other channels? Could it possibly be aid through multinational organizations? That is very slim.

Ms. LAUVE. And I think that remains will still be returned very slowly. I don't think that aid will quickly bring about the return of all remains or an accounting of all missing in action.

Mr. OTTINGER. Thank you very much, Mr. Chairman.

Thank you for your testimony.

The CHAIRMAN. Mr. Harkin?

¹ In 1966, the French allowed Hanoi to establish an economic mission in Paris similar to the Sainteny Mission in Hanoi.

Mr. HARKIN. Thank you, Mr. Chairman. And I also want to thank you for all the efforts you have put into this statement. I was leafing through your statement and following along with your reading.

What was the French experience in Laos? Did they get involved in Laos?

Ms. LAUVE. Yes; they did. In fact, Dien Bien Phu was to protect Laos. The French had forces fighting in north and south central areas of Laos. Many French prisoners were in camps in Laos. Some walked to freedom from Seno—which is in the south-central part—to the point of release in North Vietnam.

Mr. HARKIN. Were any of the French recovered from Laos after the Geneva Peace agreement?

Ms. LAUVE. There may be a lot of information about what happened to French prisoners in Laos that we don't have.

They came out by the hundreds, and there were inadequate preparations to receive them. We know that many came from prison camps in Laos but we don't know exactly how many nor from which camps. We do know that the Commander in Chief of the French Union forces reported in May of 1955—which was about 10 months after the peace—that 16,118 prisoners from the French expeditionary corps had been released. There was a breakdown by nationality of those killed in action, missing in action, and wounded, but there was no breakdown of the figure for the prisoners released.

Mr. HARKIN. So there were French men who were captured in Laos.

Ms. LAUVE. Yes.

Mr. HARKIN. And kept in prisoner-of-war camps in Laos.

Ms. LAUVE. And they were returned to Vietnam.

Mr. HARKIN. They were not released in Laos; they were marched back.

Ms. LAUVE. They were marched back to Vietnam. There were designated points of release in the POW exchange agreement.

Mr. HARKIN. Were there any experiences, after the peace agreement of any Frenchman coming forward out of Laos?

Ms. LAUVE. Not that I have heard of: I say again, there is an awful lot that has not been published.

Mr. HARKIN. But there are still some missing.

Let me ask another question. If there were not any that you know of that were alive that came out of Laos, has the French Government since then accounted for any remains that were in Laos and not in Vietnam?

Ms. LAUVE. There is a French cemetery outside Vientiane where the bodies of French Union personnel were regrouped and buried.

Mr. HARKIN. In Laos, you mean?

Ms. LAUVE. In Laos, yes. And those bodies recovered in South Laos, were regrouped and buried outside Saigon, in the French cemetery.

Mr. HARKIN. As a final question, what I see anyway, and I speak only for myself, is perhaps a long drawn out period of an accounting of our MIA's. At least, that is what we are looking at right now. This is the same as the French experience, a very long drawn out one. Is there any suggestion you can offer this committee on how we might short-circuit that? How can we reduce the amount of time involved in really getting an accounting of the MIA's. How can we shorten that period of time?

Ms. LAUVE. I think by not seeming to be too eager.

Mr. HARKIN. How is that going to work?

Ms. LAUVE. Well, they have something that we want, and we have something they want. And it depends upon bargaining, I think.

Mr. HARKIN. What do we have that they want?

Ms. LAUVE. Money. Money, very definitely. I think what has happened to the French is incredible—the things they have had to put up with to recover the remains of men they themselves buried.

Mr. HARKIN. How can we work in light of the agreements that have come to light since this committee was formed last fall regarding the letter of former President Nixon regarding certain promises of reconstruction aid, without political conditions, and in light of the fact that the Vietnamese returned at least some of them, I don't know how many, without political considerations? How can we then operate? How can we go forward from that kind of a situation, where we did make certain commitments? At least the leaders of our country made certain commitments. But now we are faced with the situation where, as Mr. Ottinger said, we are not going to give any aid of any substantial amounts to Vietnam. I don't think we could realistically get it through the House and Senate.

So how can we go forward from that when they are saying, "Look, these agreements were made and you are not living up to them." How do we go forward from that?

Ms. LAUVE. I would say that that agreement was contingent upon not taking over of South Vietnam by military forces. You mentioned that the prisoners were returned without any reciprocity. I think the prisoners were returned in exchange for our withdrawal.

Mr. HARKIN. The letter stated basically the aid was not contingent upon any other considerations, no other political considerations; take-over of the South, or anything else like that.

But, anyway, that is something that is very perplexing to me, and how we go forward from that, and how we establish a new basis of operations?

Do you feel that the Vietnamese at this point in time would, let's say, conduct their research in the MIA situation at a more rapid pace if we, instead of giving aid, were simply to lift trade embargoes, establish relationships; that type of thing? Or do you feel they are holding for money aid?

Ms. LAUVE. I think they will start, but I think each time it is going to be another price, and a higher price, just as it has been for the French. And they know we have more money. I think it is going to be slow, and increasingly expensive. And as has been said of the French experience, very unpredictable.

Mr. HARKIN. The problem that I see is, as you say, we can't be too eager. Well, again, my question was: How do we short-circuit this extended long period of time? It seems to me that the Indochinese have much greater patience than we do, exhibited by their long struggle for independence, by the fighting of French and Japanese and Americans. Time seems to be on their side.

Ms. LAUVE. I don't see how we can find an answer to that. If you look at the French experience, you see that they have constantly had some type of official representation in Hanoi. They have an ambassador there now. They have certainly made a number of concessions.

Also, I would guess that a speech like De Gaulle's in Cambodia, in 1963, in favor of neutrality in all of Indochina and very much against the American intervention, would have had some significance for the North Vietnamese.

Certainly, financial concessions have added up over the years, but still the French can't get bodies repatriated from French cemeteries in North Vietnam except at a slow pace. And I think the price, financial and sometimes political, has constantly increased. For the North Vietnamese, the French graves are like a reservoir from which they release a little at a time. If they release everything, they don't have anything more to bargain with.

Mr. HARKIN. I see. Well, really, what you are saying is that there is no way to short circuit it.

Ms. LAUVE. I don't think so.

Mr. HARKIN. Thank you very much.

The CHAIRMAN. Thank you, Mr. Harkin.

Mr. Gilman?

Mr. GILMAN. Thank you, Mr. Chairman.

I want to join my colleagues in thanking you for your testimony today. It certainly gives us an insight into what occurred with regard to the French experience.

Did the French ever get the full accounting for their missing in action?

Ms. LAUVE. I don't think so. They are somewhat reluctant to release full details. I do know that in the late 1960's there were 434 French nationals still listed as missing. But in view of the type of warfare, that is really not surprising. There were an awful lot of men fighting in remote regions and in jungle areas near the China border. In some cases, probably none returned to tell what had happened to them.

Mr. GILMAN. Did the French, like our forces, have reports of men who were missing in action and held in captivity and then no further word?

Ms. LAUVE. I don't know, but there were many who died in the camps. I am sure they were not able to have the type of accounting that we have, had—the very detailed accounting. Some that were captive and died in captivity were so reported. Whether there were others who had been listed as alive, and then didn't come out, I don't know.

Mr. GILMAN. Did the French ever recover any remains from Laos or Cambodia?

Ms. LAUVE. From Laos, yes; and from Cambodia where there was also a friendly government. There was no problem after the war. So they could recover the bodies without any problem.

Mr. GILMAN. Were all the bodies fully recovered?

Ms. LAUVE. As far as I know.¹

Mr. GILMAN. How did the French reestablish normal relations with Vietnam?

Ms. LAUVE. Well, they negotiated in Hanoi. Sainteny had been considered before and during the war as sympathetic to Ho Chi Minh and understanding of the Vietnamese desire for freedom and independence from France. Also, he was a very effective diplomat. It was he who headed the official French mission in Hanoi after the ceasefire. In

fact, I saw him there in September 1954, shortly before the Communists took over Hanoi. He had a small group of experts—political, financial, and economic—who were meeting with the Ho Chi Minh government north of Hanoi. On the one hand, the North Vietnamese needed economic, financial, and technical assistance. On the other hand French forces were withdrawing from North Vietnam. They could outship from Haiphong a lot of equipment and machinery; they could destroy or damage it; or they could leave it in place. So there was a lot of bargaining. The French also wanted to maintain some of their economic interests in North Vietnam. They didn't want their forces to be attacked as they were withdrawing; so there were many issues of concern on both sides.

Mr. GILMAN. When did the French normalize relations with the North?

Ms. LAUVE. For a long time the French had what they called a "Délégation Générale" in Hanoi. I don't know when they appointed an ambassador. I believe it was in the late 1960's, or probably the early 1970's. But I am not sure of the date.¹

Regarding trade relations, exports from France to North Vietnam increased from \$8 million to over \$18 million between 1960 and 1974.

Mr. GILMAN. You mentioned in your testimony that there were ralliers and deserters who were returned some 10 years after the war ended. Did the Vietnamese acknowledge that they were holding these ralliers or deserters after the war?

Ms. LAUVE. I don't believe they specifically said that they were holding these particular men. They did admit holding many whom they called "ralliers," but they were usually of other than French nationality. They were Foreign Legionnaires, Central Europeans, Spaniards and Italians. They also belatedly released many Africans whom the French had listed as missing.

Mr. GILMAN. Some of these were released as late as 10 years after the war; is that correct?

Ms. LAUVE. Yes. But, according to the French and the North Vietnamese, all French prisoners were returned at the end of the war.

Mr. GILMAN. You seem to imply the possibility that some of these ralliers or deserters actually were not ralliers or deserters. Is there a basis for that?

Ms. LAUVE. Yes. I think it more than possible that some of those repatriated to Communist countries in Eastern Europe were neither ralliers or deserters. There were a great many Germans in the Foreign Legion, and Poles, Hungarians, and Czechs. Many had fled their country when the Nazis were gaining control. Some later fled when the Communists took over. The Communists' governments asked for the return of many of these men who had been captured.

Mr. GILMAN. Where were these people held following the end of the war?

Ms. LAUVE. In camps in North Vietnam—in prison camps. Some of them escaped. Some of them were able to get in touch with the International Control Commission.

Mr. GILMAN. You talked about some of the prisoners being taken to China.

¹ In June 1973, the French appointed an ambassador to the Democratic Republic of Vietnam.

¹ The only bodies not recovered were two in the Pathet Lao controlled territory.

Ms. LAUVE. Those were the foreign legionnaire POW's.

Mr. GILMAN. Was that by agreement or did the Vietnamese choose to do that?

Ms. LAUVE. The North Vietnamese chose to do it. They said that the men were returning to their countries voluntarily, but refused to give the French a nominal list, or let them interview the men to ask: "Did you freely decide to go back?"

The CHAIRMAN. Would the gentleman yield?

Mr. GILMAN. I would be pleased to do so.

The CHAIRMAN. They were taking them to China; is that correct?

Ms. LAUVE. I would suppose China knew. Actually, the men were in transit. They went through China and Russia and eventually showed up in East Germany, Czechoslovakia, or other European Communist countries. In fact, some of them had been repatriated before the cease-fire.

Mr. GILMAN. Did you have an opportunity to talk with any of the ralliers or deserters after they were released?

Ms. LAUVE. No, sir.

Mr. GILMAN. Did you ever see any reports of their captivity?

Ms. LAUVE. No; I haven't. I didn't really get into this area of research until some years after I came back from Vietnam in 1956.

Mr. GILMAN. What was the longest date that these people were released following the cessation of the Vietnamese and French hostilities?

Ms. LAUVE. I think the longest-held that I have heard about were African prisoners. About 212 were released sometime between 1965 and 1968. Some of them were from French territories in black Africa and some from North Africa.

Mr. GILMAN. That is 14 years after the war was over; is that correct?

Ms. LAUVE. Yes. Some of the prisoners may have stayed in North Vietnam voluntarily—where they were reportedly given political training.

Mr. GILMAN. Was there any announcement by the Vietnamese that "We have these numbers of deserters and ralliers"?

Ms. LAUVE. No, sir.

Mr. GILMAN. Prior to the release?

Ms. LAUVE. No, sir.

Mr. GILMAN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Lloyd?

Mr. LLOYD. Thank you very much, Mr. Chairman.

And I thank the witness today for joining us. I am not very heartened by your strong presentation to the effect that you do not feel that the Vietnamese are in any way motivated towards any humanitarian effort, and that it is a quid pro quo. And I presume that I am paraphrasing what you are saying: "If you want these bodies you must pay for them in some international recognition, economic negotiations, acceptance of some commitment on the part of another administration; is that true?"

Ms. LAUVE. Yes, sir, I am afraid it is.

Mr. LLOYD. Were you previously, in any way, or have you heard of the agreements that were entered into presumably by Dr. Kissinger and the Nixon administration?

Ms. LAUVE. You mean the letter from President Nixon?

Mr. LLOYD. Yes, ma'am.

Ms. LAUVE. It was just mentioned a little while ago. I have never seen it. I have just heard about it.

Mr. LLOYD. You and I are in the same position. Unfortunately, I have not seen it, either. We can only call for a conclusion on our part in view of the fact that you are not directly involved in that. I won't pursue that.

One of the things that you seem to underscore is the fact that the limitations of time on this committee is a factor mitigating to the "unsuccessful"—I will use that term—achievement of the goals of this committee. Is that your statement?

Ms. LAUVE. I am not quite sure I understood that.

Mr. LLOYD. Are you aware of the fact this committee is limited in time?

Ms. LAUVE. Yes. Yes; I see.

Mr. LLOYD. In view of that limitation, would you say that this committee in its attempts to achieve the goals that we have set—which I think you are probably aware of—would you say that would mitigate toward a successful conclusion or nonsuccessful conclusion?

Ms. LAUVE. It is a hard question.

Mr. LLOYD. I don't mean it to be hard. But I have persistently pursued with all of the witnesses for the simple reason that perhaps I am, in my involvement in the international world, which really has very little bearing on this—I was involved in the Cuban situation in 1960 through 1963, and I made some predictions at that time with regards to a timespan which, more than a little bit, has proven to be very accurate and very correct.

I have also made some predictions in my own mind with regards to the timespan and the effectiveness of this committee in its involvement which, in essence, says that the limitation of this committee in time mitigates toward the lessening of the achievement of the goals set. That is really what I am saying.

Would you say that is true, or not? Am I too complicated in this?

Ms. LAUVE. I think the committee could last a long, long time. And unless the North Vietnamese get what they want, they will outlast you.

Mr. LLOYD. In your opinion, as an expert in this geopolitical area, would you say that the price that they will levy is more than the American public, in the final analysis, will be willing to pay?

Ms. LAUVE. I would guess so.

Mr. LLOYD. You would say "no" or "yes"?

Ms. LAUVE. I would say "yes."

Mr. LLOYD. You would say "yes"?

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Lloyd.

Ms. LAUVE, can you put in perspective—and this is a rather tough question, also—your opinion of the North Vietnamese feeling toward the French in contrast to their feeling toward the Americans? Of course, we were at war with the North Vietnamese, but we never did occupy North Vietnam, and we did not dominate. We didn't try to take one foot of North Vietnam. In your opinion, what is the feeling of the Vietnamese toward us?

Ms. LAUVE. This is strictly a personal opinion, but I think there is a certain love-hate relationship between the Vietnamese and the French—whether North Vietnamese or South Vietnamese. So many of their leaders were raised in Paris and attended the university there. The contrast with life in Vietnam was great, and the impact on many Vietnamese was tremendous. They may have hated the French for not giving them independence, but there was always that certain under-the-surface feeling. They admired French culture and enjoyed talking French. In the South, even after the years of the Americans' presence there, I noted in 1974, that there was still in certain areas—particularly among the older doctors, teachers, and other university graduates—a very strong, close identification with things French.

I am not at all sure that the North Vietnamese feel more friendly toward us because we didn't take any territory, or didn't do a few things we could have done. They certainly felt very strongly about the bombing. I think they believe that we, in a way, are more vulnerable than the French because although many Frenchmen protested against the war, there was nothing like our very high-pressure public debates on the prisoner and missing-in-action issues. In fact, I think that the French very consistently tried to play down public protests to avoid stirring up the waters when they were trying to get back all their prisoners.

I know, for example, that long after the war in Algeria, the French were able to get back some civilian prisoners, but there was never a word in the paper about it. There was no mention because the French government hoped for more releases.

The CHAIRMAN. I was attempting to establish if they felt any differently toward the United States at the end of the fighting than they did toward France at the end of the French-Indochina war. While it was not a significant gesture on their part in relation to the total number of MIA's and KIA's, they did release to the select committee the remains of three U.S. flyers without a prior agreement and without asking for anything concrete in return. I was just wondering if this indicated any difference in the relationship they had with two former enemies at the end of the respective hostilities.

Ms. LAUVE. You know, their negotiations with the French were very curious in a way. You have to sort out the issues and read through the transcripts time and again to grasp some of their tactics.

They would very often make a very nice gesture—small in terms of, let's say, monetary value—but sort of a gracious gesture. Then if they didn't get everything they wanted, they would lower the boom. I remember particularly a time when the French wanted to get them to sign a shipping agreement that was needed to implement the graves agreement. The French had to be able to bring ships into harbor in North Vietnam. They were assured that the agreement would be signed. This went on for weeks.

The French told them that they had a ship in the Saigon harbor that was ready to bring fuel oil, gasoline, and other supplies to Haiphong for the Joint Graves Committee, the French Liaison Mission to the International Control Commission and the French Délégation Générale. The French said that they would have a problem with the South Vietnamese Government if the ship didn't leave Saigon by the 3d of September.

The North Vietnamese knew this, yet when the French kept asking them, "When will you be able to let us come into the harbor? When can we sign the agreement?", they were told they couldn't come until the agreement was signed but were assured, through all sorts of statements, that it would be signed by the 30th of August.

The North Vietnamese didn't sign before September 3, and the ship had to unload the whole cargo. It was a means of embarrassing the French, and a means of saying, "We wanted you to do certain things, but you haven't done them." When the French protested, the answer was, "We did the best we could."

The CHAIRMAN. In your opinion, do you think there is a possibility that the North Vietnamese could be holding some Americans as prisoners at this time?

Ms. LAUVE. Alive?

The CHAIRMAN. Alive.

Ms. LAUVE. I don't think so. One reason I don't think so is that they know the reaction of the public here would be very strong. If anyone knew of it, everyone would soon know it, and they would lose all chance, I think, of getting any reconstruction funds or remuneration for the recovery of bodies. That is the reason I think they wouldn't do it.

The CHAIRMAN. That they wouldn't be holding any alive, but they will try to bargain and trade for repatriation of the remains that they might have and know the location of?

Ms. LAUVE. Yes. But I do think that since they so often used various categories to describe prisoners—such as deserters, ralliers, or some other term—it might be fruitful if at some time instead of asking, "Do you hold any prisoners?", you were to give them a facesaving device by adding these other categories. Make them come out and say categorically, "We don't have any deserters, or ralliers, or released before the cease-fire." These were categories they used before with the French.

Then if they say, no, they have none, I think you can be almost—if not absolutely—sure they have none because I don't think they would jeopardize their chances of receiving all the remuneration they are expecting for return of the remains of the missing-in-action by keeping a few prisoners.

The CHAIRMAN. I am a little confused. I may have missed something.

What did you say this committee should do, and what should be asked?

Ms. LAUVE. I am sure you have asked them pointblank, "Do you have any more prisoners?" But you might also ask, "Do you have any more prisoners, or maybe deserters, or ralliers?" And you might add that, knowing the political mood in the United States in the 1960's, maybe there were a few prisoners who rallied to their cause. Even if you don't believe this happened, it would give them an opening if they are holding anyone, or it would make them state categorically that they have.

The CHAIRMAN. We tried to be as specific as we could during our discussions in Paris and Hanoi when we inquired about the possibility of any Americans being held alive. We went outside and we came back in and reworded our questions to try to get the answers as best we

could. However, your suggestion of specific terminology might be well to pursue at our next meeting with them.

Even though we tried to pin them down as much as possible, we received no affirmative indication that any Americans are still alive.

MS. LAUVE. I think that is probably true. I don't think there are any Americans alive in North Vietnam. As I said, I think that in their own self-interest, they wouldn't hold any.

THE CHAIRMAN. Well, the committee is not accepting this. This is why we are moving ahead to get as much information as we can. But your testimony certainly does help us.

On page 4 you mention 300 days after the cease-fire that the French were still in North Vietnam. Why was this?

MS. LAUVE. There was a regroupment of forces after the cease-fire. The North Vietnamese regrouped in four areas in South Vietnam, and the French regrouped in one area in North Vietnam before the two sides withdrew to their respective zones north and south of the 17th parallel. There were partial withdrawals, on certain dates—October 10, 1954, was one, as I recall; October 30 was another; then a third in February 1955, before the final withdrawals. The French withdrew first from the Hanoi perimeter, then from Hai Duong—which is about halfway between Hanoi and Haiphong—and finally from the perimeter and a port of Haiphong in mid-May 1955, 10 months after the ceasefire.

As the French withdrew from the North, the North Vietnamese withdrew from their regroupment areas in the South. The last area from which they withdrew was Binh Dinh.

THE CHAIRMAN. We have made it very plain when we met with the North Vietnamese in Paris, and in the North—I thought we made it very plain to them they are not going to get any reconstruction aid from the United States. And those who opposed the war throughout in Congress were the ones that told the Vietnamese this: "You are not going to get any reconstruction aid."

I have always felt that they should go ahead and accept this. We even pointed out that America's largest municipality, New York City, received financial aid by only a 10 vote margin in the House. As far as a former enemy getting aid at this time when we are having our own desperate financial problems, it is just not realistic at all.

Do you think they would accept this? When they talk to us about the Nixon memorandum, they said, "We are only giving you this for your information." They didn't push this issue much.

What do you think? Do you think they are accepting this, or are they not?

MS. LAUVE. I don't think they are accepting it.

THE CHAIRMAN. Well, they are just delaying the situation. They are not going to get any reconstruction aid. We just took up the Foreign Assistance Act, and it eliminates any type of aid in the language of the bill going to Vietnam or Cambodia or Laos, and not one Member of Congress got up and made any comment on it, of trying to take it out or even asking questions on it. So it almost seems unanimous in the Congress that they are not going to get any financial aid.

It would seem to me if they would give us this information—and they have the information in North Vietnam—it would speed up better relations between our two countries.

MS. LAUVE. I think when they are really convinced of this, that could well happen—they might give us the information we seek. But until they are really convinced that we are not going to give in to them, they might do something like providing a little bit of information in order to try and give an impression of sympathy and understanding. I don't think they will give you all the information they have—but just enough carrot to encourage a series of concessions in return.

THE CHAIRMAN. Mr. Gilman?

MR. GILMAN. Thank you, Mr. Chairman. Just one or two more questions.

MS. LAUVE, did the French use any third-country influence to help bring about an accounting of their missing? Did they utilize the auspices of any other nation?

MS. LAUVE. They tried the Red Cross. And I think it was possible maybe probable, throughout the French effort. First the International Control Commission tried the Red Cross of North Vietnam and South Vietnam. Nothing happened. Then the French tried the International Red Cross. And possibly through them they began talking again. The French had at that time graves registration personnel in South Vietnam. And they resumed talks there. And that was the first contact after a long lapse.

MR. GILMAN. We have made an indirect appeal on one occasion to China to provide us with information. Do you think we can benefit from making some appeals to third countries to assist? Did the French ever consider that at all?

MS. LAUVE. I don't know. They may have, for example, through Communist countries with whom they had very sympathetic ties and past traditions, like Poland.

But I don't know. It may have been through them that they tried. I just don't know.

MR. GILMAN. What is your opinion about our Nation utilizing third-party countries to assist us in obtaining our goals?

MS. LAUVE. I think it would have to be third-party countries that are doing so much for the North Vietnamese that the latter would want to please them. Also, countries that are friendly enough—even if not in our camp—to go along with our request. I can't suggest any because I just don't know which would fill the bill.

MR. GILMAN. That was my next question.

MS. LAUVE. The French have been having trouble recovering remains even though they have good commercial relations with North Vietnam and have an Embassy there.

MR. GILMAN. In response to the chairman, you stated that in your opinion there were no further Americans being held, yet how do you account for the North Vietnamese not acknowledging that they were holding French prisoners, legionnaires, and deserters, for a 14-year period and not making these statements?

MS. LAUVE. They may have told the French that the 40 men returned in 1962 were ralliers. I am not quite sure but they probably did. If countries of missing foreign legionnaires or Africans made any inquiries, they probably told them the same thing.¹

¹ Many of the Foreign Legionnaires and Africans released in the 1960's had been listed by the North Vietnamese as "unknown," and by the French as "disappeared."

They claimed that a rallier was a defector and therefore he didn't fall into the category of prisoner of war—just as they claimed that prisoners whom they had released in North Vietnam before the cease-fire were not prisoners of war to be turned over under the terms of the Geneva agreement. Unfortunately, the agreement was so worded.¹

Mr. GILMAN. What is the most recent date that the Vietnamese have released remains?

Ms. LAUVE. In late 1975. They were buried in France in February.

Mr. GILMAN. This past February?

Ms. LAUVE. Thirty-two were shipped from Hanoi.

Mr. GILMAN. Almost 22 years.

Ms. LAUVE. And there are reported to be about 350 bodies in Hanoi awaiting outshipment. Of course, there is a lot of work involved in regrouping remains from provincial cemeteries and identifying them. The French aren't allowed to send their own recovery teams to the provinces. In some cases they have to accept what the North Vietnamese give them in the way of identification, in terms of expenditures to be reimbursed, and in terms of the amount of work undertaken. Sometimes the French have been allowed to send an observer at the time of actual disinterment if the cemetery is near Hanoi. I might add that I have seen photographs of some cemeteries, for which the French are paying so dearly for maintenance. The graves are covered with weeds and many stones have fallen over. At one time the French Ambassador was able to visit at least one cemetery in North Vietnam. The visits were stopped—in 1974, I believe—possibly because the North Vietnamese were concerned about bad publicity at a time when they were trying to obtain U.S. reconstruction funds in exchange for accountings for the MIA's.

Mr. GILMAN. Are these mostly French graves where they have buried their own?

Ms. LAUVE. Yes—in cemeteries.

Mr. GILMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Ms. LAUVE. I have additional questions for which I would appreciate your submitting answers for the record. They pertain to French missing-in-action and status reviews, status changes. And if we could get this information, I would like it for the record.

Ms. LAUVE. Yes, Mr. Chairman.

May I say one thing? There are a number of questions that I have asked official sources, and I am waiting for answers. But I will add these to that list. And then if you permit, I will put them in the record.

The CHAIRMAN. Are you saying they pertain to France's experience in solving the POW/MIA problems in Indochina?

Ms. LAUVE. They may be similar to yours.

The CHAIRMAN. That would be fine.

Well, if you would have an opportunity to try and answer these questions, it would be helpful for the committee to put in the record.

If there is no further business, the committee stands adjourned.

[Adjournment at 10:20 a.m.]

MISSING PERSONS IN SOUTHEAST ASIA

WEDNESDAY, MAY 12, 1976

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON MISSING
PERSONS IN SOUTHEAST ASIA,
Washington, D.C.

The select committee met, pursuant to notice, at 9 a.m., in room 2212, Rayburn Building, Hon. G. V. Montgomery (chairman of the committee) presiding.

Present: Representatives Montgomery, Gonzalez, Moakley, Schroeder, Ottinger, Harkin, Lloyd, McCloskey, Jr., Gilman and Guyer.

Also present: J. Angus MacDonald, staff director; Jeanne Shirkey administrative assistant; Dr. Henry J. Kenney, professional staff assistant; and Dr. Job Dittberner, Professional staff assistant.

The CHAIRMAN. The committee will come to order.

Before we have our hearings this morning pertaining to title 37, I would like to mention to the committee that on April 30 I sent letters to Premier Pham Van Dong asking about the American civilians still in the Saigon area, and particularly about a Mr. Leonard Judson. Mr. Judson was going blind. You may recall that we also asked about him when we were in Hanoi last December. I would like to inform the committee that we have learned that Mr. Judson has left Saigon for Bangkok. He did get out of the country. There are reports that other Americans soon will be released from Saigon. I received a packet from Mr. Frank Sieverts today, who is in Geneva attending the Geneva Conference, which I had the privilege of attending about 2 weeks ago, pertaining to updating the Geneva Convention of 1949.

Mr. Sieverts has mentioned—I haven't had a chance to digest the packet report yet—but there are rumors that other American civilians will be released from the Saigon area. We hope this is true. We have been hearing this for a number of weeks now.

Mr. Tom Harkin, a member of this committee, and Staff Director MacDonald, had lunch with Bishop Armstrong and several of his colleagues who recently toured both North and South Vietnam. They reported to Mr. Harkin that while they were in South Vietnam they were told that province officials were searching for information on the MIA's and were locating and quietly marking some American graves. They did not see any physical evidence of this search, but that was what they had learned in Hue and Danang.

Our committee met with Mr. James Klassen, who left Saigon on April 7. He is an American civilian. He reported to us that he heard of no live Americans who were still held captive, and that the Viet-

¹ Article 21 called for "the liberation and repatriation of all prisoners of war and civilian internees detained by each of the two parties at the coming into force of the present agreement."

namese officials he talked to expressed strong desires for normalization of relations with the United States.

Now, it is my privilege this morning to open our hearings pertaining to title 37, which deals with the authority of the military Secretaries to conduct case reviews. It is the legal responsibility of the military Secretaries to conduct these reviews. As you all know, this practice has been temporarily suspended by a gentlemen's agreement between the Department of Defense and myself pending the outcome of the Select Committee investigations.

This practice of conducting case reviews has been challenged in the past. Congress has been under pressure to pass a law suspending case reviews indefinitely or until section 8(b) of the Paris Peace accords has been fulfilled to the letter.

Some say you cannot make a judgment without new evidence. Some say conducting case reviews is like writing off our missing in action. Other people have argued that case reviews should never have been suspended, that it is unfair to our disabled veterans and those killed in action, that the military Secretaries should resume case reviews immediately, following the law as it was written, that our classifications have nothing to do with getting an accounting.

The committee has had questions from congressional Members, from veterans, and from wives of those killed in action about the differences in benefits in MIA next of kin as opposed to next of kin of the 55,000 killed in the Vietnam War.

These areas we will explore in our hearings on title 37.

In coming hearings we will also receive testimony from missing-in-action wives, starting the 1st of June.

Today we have two witnesses addressing themselves to title 37—Maj. Gen. Walter D. Druen, Jr., of the Air Force and Col. Earl Hopper, national director of the National League of Families. I would like at this time to call on Dr. Roger Shields, Deputy Assistant Secretary of Defense for International Economic Affairs, and who has been concerned with the MIA's and prisoners of war in Vietnam, to introduce our first witness, and also to make any comments that he would like.

STATEMENT OF DR. ROGER E. SHIELDS, DEPUTY ASSISTANT FOR INTERNATIONAL SECURITY AFFAIRS, DEPARTMENT OF DEFENSE; ACCOMPANIED BY MAJ. GEN. WALTER D. DRUEN, ASSISTANT DEPUTY CHIEF OF STAFF/PERSONNEL FOR MILITARY PERSONNEL, AND COMMANDER OF THE AIR FORCE MILITARY PERSONNEL CENTER, RANDOLPH AIR FORCE BASE, TEX., AND COL. ARCHIE GRATCH, U.S. AIR FORCE

Dr. SHIELDS. Thank you, Mr. Chairman and members of the committee.

We are here today at your invitation to present testimony on the statutory provisions and our procedures relating to status determinations. Since the United States Code delegates the authority for these determinations to the Secretaries of the military departments, or their official designee, it was considered appropriate to have the majority of the testimony presented by the designee of the Secretary of the Air

Force, as the Air Force has the largest number of personnel still in a missing category.

I have with me Maj. Gen. Walter D. Druen, who is the Air Force Assistant Deputy Chief of Staff Personnel for Military Personnel and the Commander of the Air Force Military Personnel Center at Randolph AFB, Tex.

General Druen has a distinguished career serving as a fighter pilot in both the Korean and Vietnam wars. He is well acquainted with the Vietnam war environment as he supervised some of the most varied air operations in Southeast Asia including fighters and gunships, and personally logged 173 combat missions.

I would like to take this opportunity to introduce General Druen to the committee.

The CHAIRMAN. General Druen.

Mr. GONZALEZ. Mr. Chairman, may I interrupt at this point?

The CHAIRMAN. Yes, sir.

Mr. GONZALEZ. I do so only because I feel that it is quite an honor to have General Druen, and because I won't be able to be here the entire length of the proceedings this morning. I have a conflict with the subcommittee that I chair in the Banking and Currency Committee. So if I leave in a few minutes, that will be the reason.

But I did want to take this opportunity, since we are at this time fellow San Antonians. Randolph Air Force Base is not exactly in my district now, but the first 6 years of my congressional experience it was. So I still have an affinity of interest, and it is a particular pleasure to welcome General Druen here this morning. But I did want to explain why I would not remain.

The CHAIRMAN. Right. I understand that. I also understand that some other Members will have to go. This happens to be the busy season up here, General. It looks, as if it is always the busy season, but I think the Members will get a feel of title 37, so you may proceed.

General DRUEN. Thank you, sir.

Mr. Chairman, members of the committee, it is a privilege for me to testify here today as a witness for the Department of Defense. I am the designee of the Secretary of the Air Force who is responsible for implementing the provisions of the Payments to Missing Persons Act, title 37, United States Code, sections 551 to 558, as the act applies to Air Force personnel. The Missing Persons Act has been designed to protect the best interests of a missing serviceman and the services and, at the same time, consider the financial needs of the missing man's family. Despite allegations to the contrary, the services have never acted precipitously in administering the Missing Persons Act. The fact that 816 Americans are still carried as missing in action or prisoners of war 3 years after cessation of hostilities in Vietnam attests to our concern for the welfare of our men and their families. Some of these men have been carried in a missing status for over 12 years. I have attached a list indicating the year of loss as enclosure 1 to your printed handout. The current law is adequate and provides the protection required for the individual and the services. It has evolved to its present form through a series of warranted changes. I would like to briefly summarize the legislative development of the payments to Missing Persons Act and in this manner, I hope to show the reasons for the law as it now exists.

The basic statutory structure was enacted into law on March 7, 1942, as Public Law 77-490. The purpose of the act was "to provide authorization for the continued payment of credit in the accounts of the pay and allowances of missing persons for one year following the date of commencement of absence from their posts of duty or until such persons had been officially declared dead." It further provided that upon the expiration of 12 months from the date the person was reported as missing, in the absence of an official report of death of the missing person, the head of the department concerned was authorized to make a finding of death. The original act was amended on December 24, 1942, to also empower a department Secretary to direct the continuance of the person's missing status if the person could reasonably be presumed to be living. When a finding of death was made, it was to include the date upon which death was presumed to have occurred for the purpose of terminating credit for pay and allowances.

The act was again amended in 1944 to more specifically provide for pay, allotments, and administration. The major provision of this amendment was to eliminate the requirement for the Government to recoup pay and allowance credited to a man's account between the date of actual death and the date of the review which established the presumed date of death. The change provided that amounts not paid out by allotments would be available to the man if he returned or would be payable to his heirs if he did not return. It explained that neither pay credits nor allotment payments would be retroactively invalidated or made illegal by delay in receipt of a report of death.

The Payments to Missing Persons Act was reenacted without amendment in the Selective Service Act of 1948 and again in 1953. In 1957, the act was amended to include Philippine Scouts. An amendment in 1964 applied the Payments to Missing Persons Act to military men detained against their will in foreign countries. In 1971, title 37, United States Code, section 552 was changed to allow for promotions of service members who were in a missing status even though the secretary of the appropriate military department may subsequently determine that the service member had died before the promotions were made.

The current Payments to Missing Persons Act is title 37, United States Code, sections 551-558. Sections 555 and 556 contain the secretarial review provisions, under which the secretary of each military department or his official designee can, when warranted, change the status of a member of the Armed Forces who is officially carried in a missing status to that of killed.

The change of status is accomplished in either of two possible ways: First, under section 555, the secretary concerned, or his designee, shall review the status of each service member upon the first anniversary of that member's entry into a missing status. If at that time the serviceman can reasonably be presumed to be living, the secretary shall direct a continuation of his missing status. Otherwise, he will make a finding of the serviceman's death. It should be noted that the statute only requires a reasonable presumption of death. Subsequent to the 12-month review, the Secretary may review a member's status pursuant to section 555 when substantive information is received or other circumstances indicate a change in status. If evidence

then indicates that the member can no longer be presumed to be alive, the Secretary makes a finding of death.

Second, under section 556, an official report of death is required to be made by the Secretary concerned when he receives information that establishes conclusively the death of a member of his military department. It is for the Secretary, or his designee, to determine whether this information, either alone or in conjunction with other data, is conclusive as to a member's death. Thus, the weight given to each piece of information is a matter of secretarial discretion. Section 556 (B) also reiterates the Secretary's power prescribed by section 555 to make a finding of death after the end of the initial 12-month period in a missing status, either upon the receipt of information, or a lapse of time without information, which creates a reasonable presumption that a member in a missing status is dead. Section 556 additionally empowers the Secretary, or his designee, to change a man's status to killed in action (KIA) prior to the passage of 12 months, but only upon conclusive establishment of his death.

For comparison purposes, subchapter VII of title 5, United States Code,¹ provides for payments to missing employees, and essentially, parallels the title 37 provisions for civilian employees of the Federal Government. It provides that the head of the agency concerned or his designee shall make a finding of death when he considers that the information received, or a lapse of time without information, establishes a reasonable presumption that an employee in a missing status is dead. It further provides the authority to continue payments, change, initiate, or stop allotments and make all other necessary provisions. Additionally, it provides that dependents of employees in active service are considered employees for the purpose of determining status under the provisions of section 5565 of title 5. Therefore, under title 5, the Secretary of Defense would make the status determination for dependents of Government employees of the DOD, including military dependents who were in a missing status.

Those of us responsible for the administration of this unpleasant part of the prisoner-of-war/missing-in-action issue do not take our responsibilities lightly. Before any status is changed, a board is appointed to perform an exhaustive, meticulous, individual review of all aspects of the case. Appointments to these Review Boards are limited to those who are extremely knowledgeable of the public law and who have the experience and judgment to administer the statutes in a manner to protect the interests of the missing, their families, and the Government.

Contrary to a widespread belief, a change in status is never based exclusively on the passage of time. The significance of a passage of time can only be assessed in the light of all other known circumstances. The passage of time without information is far more significant when all other known information concerning the loss of the individual is negative. In such cases, the passage of time acts to confirm the essentially negative initial information. In other words, when the events surrounding the loss of a man indicate that the probability of survival was low, the passage of time, even if no other evidence concerning the individual is received, reinforces the conclusion that the person did not survive the incident which resulted in his loss.

In addition to the circumstances of loss, all available and applicable information is considered when a review is held which could result in a determination of death. This includes intelligence reports referring to the person who is the subject of the review. In those cases now before us, it would also include information from returned prisoners of war and others who might have been in a position to have known something of the individual had he survived the initial incident of loss. In this regard, it should be stressed that a lack of information from any of those, such as returnees, who might have known if a missing man survived to become a prisoner, cannot be regarded as neutral information. Finally, the probability or likelihood that further information will or will not be received must be taken into account during a status review.

If we may for a moment reflect on our history of the Korean conflict, we would note that after the armistice agreement in July 1953, the Air Force carried 888 personnel in a missing status. There were 217 Air Force men repatriated during Operation Big Switch in August and September 1953, leaving 671 personnel unaccounted for. The accounting for these men took place as follows: 209 were declared killed in action with reports of death based on conclusive evidence; the status of 447 was resolved by a finding of death because the missing man could no longer be presumed to be alive; the remaining 15 men's status was changed from missing to captured after the Communist delegation at the Geneva Conference acknowledged that they were alive. These men, repatriated on August 4, 1955, included 4 fighter pilots and 11 members of a B-29 crew. The status of the missing Air Force personnel from the Korean war was judiciously resolved by August 1954, 1 year after the armistice, following the laws that were essentially identical to our current statutes. It is especially noteworthy that none of these men declared dead, ever showed up alive.

In Southeast Asia, some of our missing men were lost under circumstances which render the possibility of further knowledge of their fate by the other side extremely unlikely. For example, many of the incidents involving the loss of the crew of a high performance aircraft over water or in a remote jungle area would be extremely difficult to resolve through hard evidence. Even if our search teams were given unlimited access to all Communist-held territory in Southeast Asia and if the other side provided us all the information they possessed, conclusive evidence of the fate of many of our missing would not be available.

This is not restricted to the Southeast Asian conflict but is a fact of almost all wars. To cite a few other specific examples, on February 24, 1976, the Armed Services Graves Registration Office approved the identification of remains of an individual who had been listed as killed in action, body not recovered, since January 1, 1945. He was an army private from Company 1, 399th Infantry, 100th Division. His remains were discovered in 1975 by a French national near his home in Limburg, France. The skeletal portions of the remains were found in a depression that looked like a foxhole. With the remains were the man's ID or dogtags, a St. Christopher medal, remnants of

his clothing, buttons, combat boots, and rubber boots. Additionally found with the remains were two hand grenades, 18 rounds of M-1, .30-caliber ammunition, and C rations. This is the case of a man whose remains were in a foxhole for 30 years in an area that could hardly be classified as a remote tropical jungle. It was an area to which we had free access during the entire time.

Another case of recovery of World War II remains was a B-24 with a crew of 10 that crashed in the Zuider Zee in Holland on December 22, 1943. The only survivor was the copilot who was captured and remained a prisoner of the Germans until 1945. Four remains washed ashore in 1944. In August 1975, the U.S. Memorial Affairs Activity, Europe, was notified by the Netherlands Air Force that wreckage of a B-24 with human remains onboard had been found. They were discovered as a result of the Dutch Government's efforts to reclaim land from the Zuider Zee. The remains were turned over to U.S. authorities in December 1975, and complete identification was verified by the Armed Services Graves Registration Office.

There have been many factors in the evolution of the current policy pertaining to status reviews. During the conflict, we were all reluctant to change the status of a missing man without definitive evidence to support the change. This was based on our belief that any negotiated settlement of the war would include provisions for prisoner exchange and the exchange of information. This premise held true, in that the Paris agreement called for a complete accounting of the missing in the Vietnams, and the establishment of the four-party joint military team to carry out this task. The U.S. delegation to this team and the communists conducted face-to-face negotiations that resulted in the return of the remains of 23 American servicemen who had died in captivity. As these negotiations were taking place, a civil suit attacking the constitutionality of the law was filed on July 20, 1973, by five next of kin of MIA servicemen as a class action against the Secretaries of the military departments.

As a result of the temporary restraining order handed down by the court on August 6, 1973, secretarial reviews could only be conducted in those cases where the primary next of kin requested in writing that the appropriate Secretary not delay action based on information in his possession.

A three-judge panel heard the case in New York on October 23, 1973 and filed their opinion on February 13, 1974. In this opinion, the court concluded that status reviews of missing servicemen were being conducted in a constitutionally defective manner, and held that "minimum" standards of procedural due process must be accorded to the affected parties at all future reviews. Specifically, the court's final decree, which was entered on March 11, 1974, enjoined the defendants from conducting any such status reviews unless next of kin currently receiving governmental financial benefits that could be terminated by a status review are given notice of a status review. The next of kin must be afforded a reasonable opportunity to attend a hearing, with legal counsel if they so choose; allowed reasonable access to the information upon which the status review will be based; and granted permission to present any information which they consider relevant to the proceeding. Further, the decree states that these rights need only be afforded

to those next of kin, who are currently receiving governmental financial benefits which could be terminated by a status review, and who demand it after notice.

It is significant to note that with respect to status changes family members listed in the restraining order were identified as "primary next of kin." This delineation of family relationship is one of lineage and derives from applicable service directives which govern posthumous estate settlement to the designated beneficiaries of members. The final decree, on the other hand, identifies required family involvement as only those next of kin "currently receiving governmental financial benefits."

In most cases primary next of kin are also currently receiving governmental financial benefits, but there are instances where no next of kin are receiving such benefits. Such is the case when parents of a single serviceman are nondependent but are the primary next of kin. Although not required by the decree, the secretaries of the military departments are offering the rights listed in the decree to the primary next of kin in those instances.

Regulations were promulgated to implement the requirements of the court's decree, and all reviews since March 11, 1974 have been conducted in full compliance with those requirements. The departments' regulations require that reviews be preceded by the offer of the rights to the affected parties. When the case of a missing serviceman is to be considered for review, the specified next of kin are to be informed by a letter from the appropriate military department. The letter also contains an explanation of their rights for a prior hearing, counsel, and access to information and the presentation of information. If a hearing is desired by the specified next of kin, the service casualty office attempts to insure a time convenient to the family. In a number of instances, hearings have been rescheduled several times pursuant to family requests. A summary of the service case material to be utilized in the hearing is made available to the specified next of kin prior to its scheduled date. Only that information which has been made available to the specific next of kin as a result of the hearing can be considered by the Review Board in the course of their deliberations.

There are, of course, intelligence reports that we have never been able to positively correlate to a specific individual or group of individuals or for that matter even verify the validity of the reports themselves. These reports are maintained in files of some of our missing men. When a report was received, it was evaluated as to area, time and circumstances, and may result in the determination that it possibly applied to 10 or 15 individuals who were lost under similar circumstances. These reports were then placed in the files of all to whom they could apply in the hope that future information would verify the data and pin it down to a specific individual or groups of individuals.

Recently it was alleged that we withheld information from certain families for a number of years, and then released it to them for no apparent reason. As this committee has been told before, we do not make a practice of giving out unsubstantiated or uncorrelated reports. In this particular case, we had uncorrelated information of questionable validity concerning men supposedly held as prisoners in Laos. Upon declassification of this data, we made it available to the families of the only two men known to have been held in that country, and for

whom we received no further information. The families were told that this was unverified information, that it contained inconsistencies, and that it might or might not pertain to their men. However, we thought they were entitled to have the information because of the limited number of persons to whom it might apply. It is now apparent that giving it to them was inappropriate, and only resulted from an attempt to keep families fully apprised of all that we know that could possibly pertain to their loved ones.

Our work in implementing the law is complex and difficult. The law, for example, covers peacetime as well as combat losses. In discussing the statutes under which status changes are made, let us remember that they have evolved in the light of experience gained from previous conflicts and operational losses. The law, as written, provides the kind of flexibility needed to address the many and varied circumstances of loss, wherever or whenever they may occur. We should bear uppermost in our minds the need to maintain this necessary flexibility because we do not know what future conflicts may bring, and although unpleasant, the statutes shall be applicable even in a major war.

We in the Air Force believe that the law has been administered faithfully and justly. With regard to its administration in conjunction with those missing in the Vietnam conflict, some family members have been pleased; others have not. It is the duty, though, of the Defense Department and the military services to resolve the cases of their missing members, and to consider the views of all families insofar as it is possible under the law, and not just the views of some.

Frequently, the families and other relatives of our missing ask if efforts to account for a man continue after his status is changed. Mr. Chairman, we have said many times, and repeat again today to this committee, the fact that a man's status has been changed by the military services, regardless of circumstances or when such a change was made, does not mean that the Government ceases its efforts to account for him. Some time ago, after the ceasefire was signed, one of our military search teams in South Vietnam was ambushed and an officer killed while engaged in a field search operation. The individual who was the object of that search had previously been classified as killed in action, remains not recovered. Our efforts continue to address individuals in this category just as they do those who are missing.

The plight of our missing men and their families has been difficult. In contrast to the heartwarming return of those released from captivity, the process of status determination is a painful one requiring careful deliberation and difficult decisions. The burdens of the family members must be experienced to be fully appreciated. After long years of waiting and uncertainty they may be faced with a demand for great emotional and financial readjustment. Everything possible has been and is being done to ease this readjustment process for the families.

We appreciate and share the concern for these men and their families which has been so aptly demonstrated by the Congress in the past several years through the many individual initiatives as well as the enactment of legislation which has raised the level of benefits for missing and repatriated servicemen and their dependents to an unprecedented high.

The law justifiably provides financial benefits for men who are captured or are missing, and for their designated beneficiaries. This

is because the law recognizes the special circumstances of those cases. The adequacy of the laws can be shown by comparing the benefits accruing to the families of men who were listed as missing in action as opposed to the families of those who are killed. I have prepared a comparison of the monetary benefits each would have received. These two cases are hypothetical so their dates of loss, family size, time in service, and other data would be the same. This illustration is attached as enclosure 2 to the handout you have before you. Assuming two Air Force captains were lost on July 1, 1966, with one being reported killed and the other carried as missing until June 30, 1975, when he was declared dead, the family of the missing man would have received over \$165,000 more than the family of the man killed in 1966. This money is in addition to a large number of benefits for which actual figures would be difficult to ascertain.

Upon a change in status, the military compensation paid on behalf of the member is stopped. The man's dependents and beneficiaries are compensated with death gratuities, burial allowances, servicemen's group life insurance, Veterans' Administration (VA) dependency and indemnity compensation, and social security survivor benefits. VA payments start on the date the status change is made and social security benefits generally start on the date of the loss incident thus providing, in many cases, for a substantial lump sum to the widow. It is significant to note that VA and social security benefits remain generally the same regardless of whether a report of death is issued on the basis of conclusive information or on the presumption that the individual can no longer be alive. This adjustment in procedures is one example of the efforts that have been made to make compensation programs fair and responsive to individual circumstances. Additional compensation includes payment for accrued leave, refund of FICA tax, and payment for time missing or captured as determined by the Foreign Claims Settlement Commission. At this point, it is essential to note that some benefits depend on such variables as rank, number of dependent children, earnings of the family members, whether the widow remains unmarried, and the extent that parents were dependent on the missing member. Such variables and the complexity of the various benefit programs require that each case receive individual consideration by competent specialists. To insure understanding and the applicability of the various entitlements, the services continually counsel the families of their missing and provide personalized assistance with all the details which must be taken care of at the time the status change is made. An extensive medical treatment program is also available to the widow and her children. This program generally provides certain hospitalization and outpatient care in civilian medical facilities and in uniformed services facilities. In addition, the widow is permitted the use of military installations, including exchange, commissary, and theater, until she remarries. This convenience is also available to dependent children up to an age where they would no longer normally be dependent on the service member.

The financial situation of the individual's survivors may also be bolstered by any money that has been deposited in the uniformed services savings deposit program (USSDP) while the individual was in a missing or captured status. This program offers an interest rate

of 10 percent and has been used extensively by most of the family members. The normal limit of \$10,000 that could be deposited in USSDP was lifted for families of the captured and missing. Essentially, there has been no limit to the amount they could put in the program as long as monthly deposits do not exceed authorized pay and allowances. Some families have accumulated over \$200,000 in USSDP savings. Over the years, the family members were permitted to withdraw from their USSDP account to handle unexpected expenditures and legitimate financial emergencies. This savings program has been eliminated for all servicemen except those who are still missing.

The payments to Missing Persons Act is intended to fulfill the Government's financial responsibility to a missing serviceman and his family so long as the man remains in a missing status. The law, of course, provides the authority and responsibility for the Secretaries of the military departments in the case of military members and the heads of the Government agencies in the case of nonmilitary employees of the Federal Government as well as all dependents, to make determinations as to whether or not the missing person is alive or dead.

At present, some family members are seeking an immediate status change from missing to deceased. Conversely, others are demanding a complete moratorium on status changes until Southeast Asia can be swept for grave sites and combat locations where men were lost. In actuality, neither precipitous status changes nor a total cessation of such changes is legally or morally justified. The present law states that where a reasonable doubt exists, the missing or captured status of these individuals should not be changed until every feasible effort has been made to secure additional information; but that in those cases where a reasonable doubt no longer exists and a change in status is justified by available information, it should be made in compliance with the law. The decision to change status should not be unalterably tied to the inspection of combat sites, the recovery of remains, or the personal desires of family members. I must stress the point that the question of the status of an individual may well be separable from the question of determining precisely when he died, or whether his remains are recovered. Rather the decision should be based solely on a thorough study of the available information and a qualitative judgment as to whether a change in status is appropriate. Elimination of this well-established system could ultimately cause irreparable harm to the families, the men, and the services as well as to those individuals similarly involved in past and future conflicts.

I would like to again thank you for allowing me to appear before this committee. At this time Dr. Shields will discuss some of the problems in determining whether or not a man survived his loss incident as well as some of the cases where a man was mistakenly listed as killed and subsequently turned up alive. After Dr. Shields' statement I will be available to answer any questions you may have. In addition, there are representatives from the other services here who can assist in answering specific questions that do not pertain to the Air Force.

The CHAIRMAN. Thank you, General, for that very detailed and enlightening information.

I would like for the record to show at this time that earlier in the committee hearings this morning, there was 100 percent attendance

of the committee, which is rather unusual for congressional committees.

Dr. Shields.

Dr. SHIELDS. Thank you very much, Mr. Chairman.

Mr. Chairman, as the general mentioned, some of the most difficult decisions of the war were determining the status of a man who became missing in action. As I have testified earlier, the people responsible for the initial determination of a man's status were generally reluctant to declare a man killed if they had any doubts about his survivability, therefore, we probably had the greater number of errors where a man was listed as missing when he actually had been killed. We did, however, have nine cases where men were declared killed but whom we later learned were alive. Let me give just a brief summary of a few of these cases.

There was a case involving a marine who was lost on April 26, 1967, under circumstances which led the Marine Corps to list him as killed in action, body not recovered. He remained in that status for 4 years and 9 months. His status was changed to prisoner in January 1972, after he was identified in a liberation radio broadcast in December 1971, and after the release of a letter written by him, also in December 1971.

Another case involved the pilot and co-pilot of a Marine helicopter who were flying a combat support mission in the vicinity of the Ashau Valley, South Vietnam on the afternoon of March 28, 1968. Their mission was to insert a nine man Vietnamese Army Ranger team and to extract a six man Marine Corps helicopter maintenance team. As they approached the landing zone, they encountered a heavy volume of antiaircraft fire. After they made the exchange of personnel, they lifted off and the aircraft immediately began to experience difficulties in the form of reduced rotor turns. After flying for approximately 2 kilometers, the pilot decided to take the helicopter down through the jungle canopy.

The rotor blades chopped a path through the trees, the helicopter washed to the ground and rolled over on its side. Apparently all of the personnel aboard the aircraft were knocked unconscious as a result of the crash. The pilot and copilot were still in the cockpit after the crash. One crewmember, after regaining consciousness, shook them but neither one responded. Approximately 2 minutes after the crash, everyone, with the exception of the pilot and copilot, got out of the aircraft. Two crewmembers looked into the cockpit from the outside and saw that the pilot and copilot seats had been thrown forward. Both crewmembers subsequently stated that the pilot and copilot appeared to be crushed to death as a result of the crash.

Based upon the circumstances of the crash and the other crewmembers' statement that the pilot and copilot appeared to have been crushed to death, they were determined to have been killed in action on March 29, 1968.

Due to the immediate threat of enemy activity in the area of the crash, the surviving crewmembers could not extract the bodies of the two men from the helicopter.

On May 18 approximately 1½ months later, an investigating team and a security force were inserted into the area to attempt to retrieve

the bodies from the aircraft. The cockpit, cabin and the surrounding terrain were thoroughly searched for any clues as to the fate of these men. The search revealed no trace of the bodies; however, upon examination of the cockpit area it was determined that the occupants could have escaped from the cockpit. The fact that no remains were recovered at the crash site and the close proximity of the enemy, their status were changed to missing in action. Based on subsequent monitored broadcasts and handwriting analysis of letters from North Vietnam attributed to these two men, their status was changed to captured on July 23, 1968.

To more graphically portray the nature of modern warfare and some of the problems that were faced in determining initial status, we made a search of our documentary films, and have extracted a very short portion to show at this hearing. The first segment is from a combat documentary film on F-105 strikes over North Vietnam and shows surface-to-air missiles (SAM) launches as viewed from an F-105. It will show how rapidly a SAM goes from the ground to the aircraft altitude, and the speed with which a crewmember must react to avoid being hit.

The second segment is a very unusual film. It was shot from a reconnaissance F-4 of another RF-4. The film is stop action and shows the RF-4 being hit by a SAM and the subsequent explosion.

The third segment is of the Thunderbird aircraft loss at Transpo 71 at Dulles Airport here in Washington. In this segment you will see the pilot eject and come to Earth.

Can we have the film?

[Film shown.]

Major MANEY. The film is leading up to an actual sighting of the missile. You will see the missile come up and strike the aircraft, the aircraft disintegrates and tumbles.¹

That is an 8 mm flack. The little flashes you see are groundfire. This is the F-4. That is the SAM missile having been launched. You will see it strike the aircraft which is cruising along here. There is the hit. The aircraft tumbles, starts to disintegrate and break up.²

This is made from an 8-millimeter film. There is the aircraft going out of control. The pilot is trying to regain control of the aircraft. There will be a slight flash where he ejects. The parachute is coming down right here, very difficult to see. It comes down to the ground.

We would like to show it again to point out a couple of more items, sir. Primarily on the F-4 shootdown, both men got out of that aircraft. One of them died in captivity. The other was repatriated.

On the last segment, the last Thunderbird, the man landed in the fireball and was killed. So even with eyewitness viewing of an incident, it is extremely difficult to see what actually transpired. It is interesting to note on the debrief of the pilot who came back from the F-4, it is one of those total cases of amnesia. He remembers talking to the leader about the weather in the target area about 5 minutes prior to the hit, and then 4 days later he remembers being in the hospital in Hanoi—nothing in between.

Dr. SHIELDS. None of the other aircraft in the area that saw the SAM hit the F-4 saw any chutes. As far as the observers in the other

¹ See p. 250.

aircraft were concerned, no one got out of that airplane, but in fact both crew members did.

Major MANEY. In the first section, with the sound, you will hear the flight leader saying "SAM's, take it down, take it down." And even with well-disciplined pilots, you will hear one man say, "Which way?" You are very busy handling your own aircraft, and it becomes extremely difficult to keep total track of everyone else in your formation.

And I think you can see the speed at which they get to your altitude.

I will say the first time I had one shot at me it seemed like it was an hour and a half before it got up there. But things happen very quickly.

Mr. OTTINGER. Do these SAM missiles track?

Major MANEY. They are radar controlled. But it is like a car on ice. You have one going at 30 and one at 60, the SAM's are going so much faster than the airplane, that in a good hard turn the airplane can out turn the SAM. The SAM cannot turn with you. So if you can see it or have knowledge of it, you can generally break contact where it cannot quite catch up with you.

The CHAIRMAN. In the radio sound of his voice, you can hear the stress.

Major MANEY. Yes, sir, there is a little bit of excitement.

General DRUEN. Sir, also in the cockpit of some aircraft radar warning devices use a tone that you could hear when they launch. And it kind of speeds up your pulse just a little bit, when this thing keeps going off, and you are alert to the fact that maybe a SAM will come up, and then you could get a launch light, in most cases. We had that in the later 1960's.

The CHAIRMAN. A launch light within the aircraft?

General DRUEN. Yes, sir, in some cases you did. In some cases you didn't depending on how you were positioned. But you hear the radar warning tone in your earphones. It sounds like a growl, a real tough growl—kind of like tearing a window shade. It really got your attention. It was meant to get your attention.

The CHAIRMAN. The light shows up on the cockpit instrument board?

General DRUEN. We had a device that would kind of show you a strobe of where it might be.

Major MANEY. There is the SAM. The second launch. The last transmission was "OK flight, let's get out of here to the Northwest."

Another SAM launch. There it is. And the F-4 seen again. Like I said, this is a rotating prism camera that shoots the entire horizon. The SAM coming up, the same frame, the hit, tumbles, breaks up.

Mr. GUYER. Are those missiles controlled?

Major MANEY. Yes; they are radar controlled. However, they did on occasion fire them ballistically. But generally they were radar controlled.

The CHAIRMAN. Thank you.

Dr. SHIELDS. Mr. Chairman, members of the committee, from what you have seen, I think you will agree that even with eyewitness statements, it is extremely difficult to really tell what happened.

To return to those men who were mistakenly listed as having been killed, I would like to discuss the handling of benefits associated with these errors.

When they were declared dead, their beneficiaries received the proceeds of the servicemen's group life insurance (SGLI), plus all pay that had not been paid to the man and a death gratuity. When the error was discovered the men were reinstated. Additionally, it was determined by the Veterans' Administration that all payments made by the Federal Government had been paid in good faith and they were waived as nonrecoverable.

The handling of payments by commercial insurance companies varied but was generally equitable. In several cases they let the payment stand, in others they recovered partial repayments, 25 percent in one case. Generally, however, they were based on the ability of the family to repay the companies.

That terminates our formal statements, except to thank the committee for providing us the opportunity to present this testimony.¹

The CHAIRMAN. Thank you, Dr. Shields.

Mr. Moakley.

Mr. MOAKLEY. I don't have any questions.

The CHAIRMAN. Mr. McCloskey.

Mr. McCLOSKEY. You placed a moratorium on changes of status for how long?

Dr. SHIELDS. The current moratorium, of course, is related to this committee's work. We anticipate that you will make some recommendations to us, which we will then be able to consider, when you terminate your investigation.

For one reason or another, we have never initiated general status changes, even from the beginning of the war. Right after the conflict ended for the United States in January of 1973, we anticipated that with the information that we received from the returned prisoners, and with cooperation from North Vietnam and its allies, including the ability to make appropriate searches, that we would be able to carry out status changes in an orderly manner, and to ascertain what happened to our men. It became immediately apparent that we were not going to receive cooperation from the North Vietnamese or from their allies. And it also became apparent—

Mr. McCLOSKEY. Let me interrupt you just a moment, Dr. Shields. After this committee got into operation, Secretary Kissinger announced that we would open negotiations. That was a few weeks ago. What has he done in respect to opening negotiations with the North Vietnamese?

Dr. SHIELDS. I know that contact has been made. I am not sure beyond that how things have developed.

Mr. McCLOSKEY. In other words, that would be the State Department testimony. You are not participating in that?

Dr. SHIELDS. We are informed, but we are not the lead agency. That is the State Department. I have not kept up with the precise state of our contact.

Mr. McCLOSKEY. When this committee has requested information on any individual file from the Defense Department, have you furnished us all of the information in connection with that file, including rumor information or unsubstantiated or uncorrelated data?

Dr. SHIELDS. I am not sure.

¹ Supporting documentation submitted by Department of Defense appears on p. 234.

Mr. McCLOSKEY. I would like to be very sure on that point, General.

Colonel GRATCH. Yes, sir, we have. In some instances—

Mr. McCLOSKEY. Is there any case where you have held back any type of information of any kind, uncorrelated, unsubstantiated, from this committee?

Colonel GRATCH. Not when it was requested. If it was part of the file, it was provided.

Mr. McCLOSKEY. You understand my question, Colonel? We have requested certain files. Has there ever been a file given to us where any information of any character, unsubstantiated or uncorrelated, has been withheld from our committee?

Colonel GRATCH. No, sir, not if we have it. If it is in our file, we have provided it to the committee.

Mr. McCLOSKEY. The procedure you are following, if this committee asks for a file, we receive the information.

Colonel GRATCH. Yes, sir, if we have it.

Dr. SHIELDS. I would qualify that, Mr. McCloskey, to say that we would have to provide thousands of documents of unsubstantiated information with regard to every case.

Mr. McCLOSKEY. Dr. Shields, you understand what I am saying?

Dr. SHIELDS. Yes, and my answer to that would be to qualify this by saying, no, we have not passed on all unsubstantiated or uncorrelated reports. For example, with regard to Laos, we know that men captured in South Vietnam were moved through Laos and into North Vietnam, men who returned had been taken through that route. Now, we have had reports of men lost or men having been seen in Laos that are unsubstantiated. Those reports could theoretically apply to every missing man, because the men lost in the south could have been moved through Laos. We don't know of any men who were moved from North Vietnam to Laos. But that is possible.

We would not provide, with the records of men lost in South Vietnam, all unsubstantiated reports of sightings in Laos. So that would not go with those files.

Mr. MOAKLEY. Would you yield just for a question? Is there any information that would be taken out of that file if this committee asked for it before it was given to us?

Colonel GRATCH. No, sir.

Mr. MOAKLEY. So if we asked for "Private So-and-So," everything that is in your file would be sent to this committee.

Colonel GRATCH. Yes, sir.

Mr. MOAKLEY. Is that what you are asking?

Mr. McCLOSKEY. Dr. Shields, let me tell you my problem. I was in Los Alamitos Naval Air Station last Saturday. I suppose there were 50 to 60 relatives of the MIA's. We had a very candid exchange of their problems and ours. There seemed to be an almost universal belief that the Defense Department had not been wholly candid, either with them or with this committee. What we are trying to do is what the General has said, is to resolve that concern, the perceived feelings that these people have, that the Defense Department has not been wholly candid with them. And just from my own experience, I can recall cases where perhaps worry about torture, worry about conduct of other people that shouldn't be in a file, the rumors of misconduct

of either the individual or associated individuals that the services might not like to be fully understood, information that might be distasteful to the relatives if it were known to them, rumors of such situations or unsubstantiated, uncorrelated data. I can understand an unwillingness, for example, to tell a widow all of the circumstances under that kind of a case.

What I want to make sure is that if there is the concern of any individual that comes to this committee, and expresses a concern, that this committee see that information, that we then make an independent determination whether this information should be released or should not be released in the interests of fairness. But if this committee cannot assure every relative that we have made that inquiry and have received all relevant information, then we are not doing our job. I quite agree, this unsubstantiated—excuse me—these prisoner sightings, the CIA indicated they had some 150 prisoner sightings—that might not necessarily be relevant to an individual case of somebody shot down in South Vietnam. But what about this other problem? Can we be sure that nothing has been removed from the file, that no information that might be harmful to the Air Force or to other services has not been removed, and that when we make the request, all information of this kind is furnished to this committee?

Dr. SHIELDS. The service representatives who provide these all say yes, that is correct. And beyond that, Mr. McCloskey, the committee staff has access to all of the unsubstantiated or uncorrelated reports. In some cases we have no idea to whom a report might pertain, or even if it is correct. The committee certainly is free to, and in fact has looked into some of these kinds of cases as well. So that material is available. And beyond that, of course, we in the Defense Department, in the services, many times have indicated that we do have volumes of such reports. We have never denied that. We have made those statements to the National League of Family Groups. We have made those statements in briefing trips to military bases around the country, to which all families of missing and prisoners have been invited. We have never tried to hide the fact that we have many kinds of reports that may mean something or may not. At this point in time it is very difficult to say.

Mr. McCLOSKEY. Dr. Shields, I understand that. And I respect what you are saying. But the record of the past administrations has not been all that good, in candid statements either to Congress or the public. We have a specific burden in this case I think to resolve all doubts. I just want to make sure that we do, and set this behind us forever, once this committee completes its work. Thank you.

Dr. SHIELDS. Mr. McCloskey, you can understand our difficulty in proving or disproving a negative. We can never prove to anyone's satisfaction that we don't have other kinds of material. It is a very difficult thing.

Mr. McCLOSKEY. As long as nothing is being deliberately withheld from this committee, and that all relevant information that might help us is being delivered to us—

Dr. SHIELDS. It is.

The CHAIRMAN. Colonel, do you have anything to add to this?

Colonel GRATCH. No, sir.

Basically, anything you ask for that we have, we provide.

The CHAIRMAN. Then you would state before this committee today, on behalf of the services that are here, that we can get any information we want, this committee can, pertaining to an individual classified a missing in action or prisoner of war?

Dr. SHIELDS. That is correct. The committee furthermore can come over and ask to see the information which is general and vague, and they can read through that. The volumes are numerous, probably into the thousands of documents, but we have no problem with the committee seeing them.

The CHAIRMAN. Well, I think the average time these Americans have been missing is 9 years. And I really see no reason any type of information other than very, very personal—should be withheld. But that clears it up.

Mr. Guyer.

Mr. GUYER. Thank you, Mr. Chairman.

This is pretty good testimony. I am sorry I missed a considerable number of meetings in the last several weeks.

I am wondering, are all the procedural reviews made by the four different services the same?

General DRUEN. I cannot answer that question.

Colonel GRATCH. Yes, sir.

Mr. GUYER. The four branches of service, all have a uniform procedure.

Colonel GRATCH. Yes, sir. You will see in the attachment the various regulations for the various services. It is all based on the three-judge Federal decision in the lower district New York court.

Mr. GUYER. One of the complaints I think we received from relatives and families of missing-in-action was that when Operation Homecoming was consummated back in 1973, that your case-by-case study began with the year 1972, rather than in chronological order from the first that happened. Is this true?

Colonel GRATCH. Sir, in some instances where returnees came back, particularly crews in B-52's, where some of the crew members came back, and some did not, they were able to provide us first-hand information on what happened to the other members of the crew—he saw him dead, he was blown apart, he never got out of the airplane. In those instances, where we had factual conclusive data, the services did—

Mr. GUYER. You did begin chronologically and go backwards?

Colonel GRATCH. In those particular cases we took them as the information was provided us. But the general game plan was to start with the oldest ones first.

Dr. SHIELDS. That was never done, Mr. Guyer. There never was a systematic review.

Mr. GUYER. In other words, you did it as the need required.

Dr. SHIELDS. As information became available in essence.

Mr. GUYER. Is there any parallel between the 15 men you reported from the Korea experience with the Vietnamese experience?

General DRUEN. None that I can think of, sir.

Mr. GUYER. You had 15 men in Korea held over for 2 years after the Korean war.

General DRUEN. They were captured on the north side of the Yalu.

Mr. GUYER. You have a parallel between that and some of the men still missing. We have 816 that have not been accounted for.

Dr. SHIELDS. There was one individual, Mr. Guyer, who was not listed by the North Vietnamese in Paris at the time of the signing of the cease-fire document. His name was not given to us until after the time limit set for the repatriation of the prisoners had expired. He was about 1 day beyond that. This was an individual who had been held in the Mekong Delta, Kinwah Province, an Army captain, and the Vietcong told us in a very casual way, around the 1st of April, "We have had a report from one of our units in the Delta with whom communications have been poor that there is an American down there. You should make arrangements to go down and repatriate him." So Captain White was repatriated I think 1 or 2 days past the expired time limit. That is the closest parallel. We do have men, though, who we still carry as prisoner-of-war. Some probably carried that way because of erroneous information—but unquestionably, men who at one time were prisoners, and whose last condition known to us was to be alive and in the hands of the enemy, who were never repatriated.

Mr. GUYER. Do you have a service group like yours that is available to go out and make a presentation and summary to, for example, families?

Dr. SHIELDS. Yes.

Mr. GUYER. How often do you do this?

Dr. SHIELDS. The services have been doing this on an individual basis.

Mr. GUYER. By request?

Dr. SHIELDS. They have been going out, or had been making regular visits. I think our last DOD group, with members of all services represented, as well as the Secretary, probably was in 1972. After that time, after the men who returned came back, it was done on an individual basis. But we received some commentary from some families indicating that they resented these procedures. Some of them apparently felt that these visits, rather than being aimed at providing more information and giving the current status reports, were really aimed at convincing families that they should make a request for a review, which was never the purpose of these visits. But I think the services in addition to that have also been providing service news letters on a regular basis to detail the current events as they happen in this area.

Mr. GUYER. My last comment would be, it seems that there is some kind of a gap between the hunger for information and the supplying of it. In other words, the families and surviving relatives have had to carry their appeal to the public rather than to some of us. In other words, the public cannot do anything, except to emotionally and substantially be on their side. But they are powerless to provide any information. Like Mr. McCloskey goes out and holds a number of meetings with constituents. He came to my State. Mr. MacDonald was over meeting with our people in Columbus. And yet it is almost a hopeless job for an individual to be the filtering instrument whereby conclusive information is passed along with some degree of authority. I would hope that we would have the same degree of fervor that you do when you recruit people. We have all kinds of films to recruit

people, all kinds of information to attract people to the service. But do we have the same consideration to go back to the ones that still are having a hole in their heart, and say, "This is what we have done." In other words, there ought to be some kind of a recent relation with these people that we could have question and answer periods following the film presentation or whatever you put together. Is this something that is too far beyond hope?

Dr. SHIELDS. No; I believe that is certainly something we could do. We can do that with a group as you suggested. I see no reason why we could not continue that. I think perhaps of more concern to family members would be the kinds of information which they believe for one reason or another that we possess, and we are not handing on to them, as Mr. McCloskey suggests.

We don't have the kinds of information which the families request. We do have service newsletters. We do have casualty assistance officers assigned to each family, but the truth is now that we are not receiving any kind of intelligence information that amounts to anything. Since South Vietnam fell, and we have had to reduce our operations in Thailand, and Laos has fallen to the Communists, we have had very little new information, and we have very little to provide the family members.

Mr. GUYER. The substance of testimony given here is that there is nothing really in your files that has not been supplied that would be relevant or informative. So then would you conclude generally, from all of our hearings, that the answer still has to be over there rather than here?

Dr. SHIELDS. There is no question about it. The only answers available are the answers known now to the Communist nations in Indochina. They have information, and we know they have information, which they have not passed on to us. The only way that I know we can acquire this is for them to cooperate with us.

We have problems. I will illustrate the point.

We received a report mentioning two individuals by name, two Army personnel, indicating that they were prisoners of war, that they had been captured in Cambodia. This ran contrary to all the other information which we have regarding those individuals, including some very convincing and very firsthand reports from prisoners of war who had been repatriated. We passed that information on to the families, but at the same time we told the families that we believed these reports had a very low degree of credibility. We received a very mixed reaction from doing that. We were asked why we passed on information which we did not believe was correct, and if we were raising hopes falsely, and just exactly what we were trying to do.

So we are really walking a tightrope. We have had some family members who have requested that we not communicate with them, to the extent of not sending service newsletters until we have something firm to communicate to them.

We really have to react to individual families, I think.

Mr. GUYER. Then so far as any administration position change, there has been no new news since they closed all the doors, which they have apparently. Did Lester Wolfe relate to you his experience in the People's Republic of China?

The CHAIRMAN. That is correct.

Mr. GUYER. He couldn't get anybody to go with him to their Embassy or even open a door. He took a cab. As a matter of fact, even our own people would not escort him.

The CHAIRMAN. Thank you, Mr. Guyer. We are certainly glad to have you back with the committee. And I might say that your attendance has been outstanding. Whenever we have called a meeting and you were not under the weather, you have been right here.

I want to recognize Mr. Harkin. And then I would like to ask about three questions myself.

Mr. Harkin.

Mr. HARKIN. I only have one question. When were these cases on the MIA's closed after the Korean war?

General DRUEN. Within a year, sir. At the end of a year, we closed out all of the cases—within 1 year after big switch occurred—by 1954 I believe the date is August of 1954.

Mr. HARKIN. Were some of those listed as missing in action at the time of the cease-fire, listed as missing in territory then occupied by the North Koreans? In other words, some were probably listed as MIA's in what is known now as South Korea. But after the push up to the Yalu River, some were probably listed as missing north of the 38th Parallel.

General DRUEN. I cannot answer your question, sir. I don't know. Some of them had occurred north of the 38th Parallel. It was stabilized, as you recall, around the later part of 1951 or 1952. When the 38th Parallel stabilized, they went into the talks, so all of the losses after that for the Air Force were above the 38th Parallel.

Mr. HARKIN. Did they ever account for any of the missing at all? I cannot imagine the North Koreans ever did. However, I could be mistaken.

Did the North Koreans ever return remains of casualties?

Colonel GRATCH. Yes, sir, there were remains returned. I cannot give you a figure.

Dr. SHIELDS. By the North Koreans?

Colonel GRATCH. Yes, sir.

Dr. SHIELDS. There were some that were not, I know.

Mr. HARKIN. I am trying to draw a similarity between that situation and the situation we are in now. It is one thing to account for the MIA's in South Korea, where we have free access; it is quite different in North Korea. The situation of men listed as missing in all of Indochina would seem to me to parallel the situation of those listed as missing in what is now known as North Korea.

Dr. SHIELDS. There were 8,184 individuals whose remains were not recovered, which is 22 percent of total Korean war casualties, never recovered.

In contrast, in Vietnam, we are talking about approximately 4 percent of our casualties who have not been recovered. That includes the men who are still listed as missing and prisoners. So we are much farther ahead in Vietnam in relative terms than we were in Korea or World War II.

Mr. HARKIN. I see.

Mr. GUYER. Will the gentleman yield? I am curious. I think our figures show 4,700 from the Korean conflict never resolved, or presumed to be dead. How are they carried on the books?

Dr. SHIELDS. I think that number was 879 individuals whose status was never satisfactorily resolved with definitive information. These men were presumed dead, and are carried now as dead.

Mr. GUYER. With survivor benefits?

Dr. SHIELDS. Terminated just as the law requires.

Mr. HARKIN. One other question, Mr. Chairman.

Is the law regarding this basically the same today as it was after the Korean war or has it changed substantially?

General DRUEN. I would say it is basically the same law.

Mr. HARKIN. Is it being applied the same today as it was after the Korean war?

Dr. SHIELDS. I think it has with the exception of the moratorium and the class action suit, which altered the status determination hearing. The three-judge panel in New York, as General Druen indicated, required that a hearing be held before the actual status review, if the family member receiving benefits so desired. So that has been altered procedurally. That is one change. Of course, the other change would be that we have not gone forward to resolve these cases as expeditiously as we did after the armistice in Korea.

Mr. HARKIN. That is basically because of that court decision.

Dr. SHIELDS. We felt we had concluded a cease-fire agreement that contained the most comprehensive measures for achieving an accounting ever included in any cease-fire agreement ever. And we felt that that would allow us to make status changes based on more information than we had before. In anticipation that we would be able to carry this out, we did not carry out general reviews. It became apparent rather quickly that the negotiations were not going to be smooth, that we would not be allowed to do the things which we had anticipated doing. After that time, of course, there was a moratorium because of the court case, which altered the circumstances somewhat. Then there were other negotiations and then finally this committee. So we have never proceeded with the general review of cases as was done shortly after the Korean war.

Mr. HARKIN. Thank you very much.

The CHAIRMAN. Thank you.

General DRUEN, I have asked every witness this question. In your personal opinion, do you think any American military personnel are still being held as prisoners in Southeast Asia by the Communists?

General DRUEN. In my personal opinion, sir, I do not.

The CHAIRMAN. You do not think any U.S. servicemen are being held as prisoners.

Of course, we don't know what action this committee will take, how the final report will come up. I would like to present this question: If the committee does come up with the recommendation that presumptive finding of death be implemented by the different departments, does that mean that the search is over, nothing else will be done? Would you care to answer that question?

Dr. SHIELDS. The general can comment, too. I would say it certainly does not indicate that nothing more would be done. As General Druen's testimony indicated, we have been able to react with regard to cases that were unresolved after World War II. We have teams at all times who are prepared to go into the field, when we have the opportunity to do so, and we would react in the same way. We certainly would not cease our efforts. And if—

The CHAIRMAN. You have teams in Europe now?

Dr. SHIELDS. I am not sure whether they are physically located in Europe at this time. I am sure there are individuals there who would be able to do it, but the opportunities are so few, and so far between, that they may be stationed in the Pacific. They are able to react and they are able to go to the areas where they are required. We would certainly maintain that capability. The records would be maintained so that we could react. I would assume that if we are able to establish negotiations with North Vietnam and Laos, and others, in Indochina, that we would certainly respond to that just as we would have 1 or 2 years ago.

The CHAIRMAN. Dr. Shields, I assume by your testimony that the precedent has been set that American military personnel, when classified as killed in action in the 1960's and the early 1970's and then they came out in 1973, that it was not required, where the different benefits had been paid the next of kin, that the next of kin pay it back. Am I correct in this?

Dr. SHIELDS. That is correct, with regard to the Government benefits.

The CHAIRMAN. I don't know what the committee would do, but if the committee recommended presumptive finding of death, and then you went ahead and changed the status, and then, God hoping that some of these Americans were prisoners, and would come out, it would not affect the status because a precedent has been set—of course, I know you can break precedents—but no funds were required to be paid back for these nine Americans that came out alive, but were classified as killed in action. Am I correct in that?

Dr. SHIELDS. That is correct.

The CHAIRMAN. General, do you have any comments on the two questions I have presented to Dr. Shields?

General DRUEN. The law is as he stated. I cannot visualize that the Air Force, and I think I speak for the other services, will ever stop looking for individuals, or trying to prove exactly what happened to them. We daily talk to families that have questions concerning anything, both missing in action and people that have already had their status changed.

So I just cannot visualize us not continuing, being able to get teams together, if required, to go back to the records, go in there, if we ever have the opportunity to go back into that area.

The CHAIRMAN. General, an Air Force plane went down over the Atlantic last week, and a naval aircraft went down over the Mediterranean several months ago. What will be the classification, and what is the classification of the Air Force personnel—I know it has just been a week—what will be the classification eventually, if no information is forthcoming on these Americans?

General DRUEN. Again it is up to the commander in the area to make the determination, and we carry it out. In the case of the Air Force aircraft over the Atlantic, the individual was carried in a missing status for a period of days while the search was continued, and he has just been recently declared in a killed status.

The CHAIRMAN. He was declared in a killed status. How about the one over the Mediterranean, in the Navy? And you might identify Dr. Shields, the other service directors that are here.

Dr. SHIELDS. Colonel Bobinski from the Army, Commander Colgan, who will answer your question for the Navy, and Major Dietrich, from the Marine Corps.

Commander COLGAN. Are you referring to the A-7 loss off the U.S.S. *Independence*?

The CHAIRMAN. That is correct.

Commander COLGAN. Yes. That pilot was put into a missing status and remained in a missing status for 60 days; then there was a hearing held in accordance with the Missing Persons Act, at the Bureau of Naval Personnel. The primary next of kin waived her right to a hearing, and a presumptive finding of death was made in that case.

The CHAIRMAN. Thank you.

Let us turn our attention to the uniformed services savings deposit program, where the 10-percent interest is paid. As I understand it, only those missing in action and prisoners of war can use this fund at this time. How much is in this fund, for the record, for the Air Force?

Colonel GRATCH. The Air Force presently has \$26 million in the USSDP Fund, representing some 433 families' deposits.

The CHAIRMAN. What other branch of the services have a separate fund?

Major DIETRICH. I believe the Marine Corps account exceeds \$5 million, representing 58 people.

The CHAIRMAN. As a presumptive finding of death is declared, these funds are paid to the next of kin; is that correct?

Major DIETRICH. Yes, sir, based on the man's last record of emergency data, where he listed the beneficiaries that he would like to receive certain funds.

Colonel GRATCH. Also, Mr. Chairman, they are allowed to keep this in that 10-percent saving for an additional 90 days after the finding of death, or after the death declaration. They can keep it in this account at the 10-percent interest for an additional 90 days.

The CHAIRMAN. You mentioned in your testimony \$200,000, several accounts are that much. Are any accounts \$100,000? Can you give us a brief breakdown?

General DRUEN. Yes, sir; we have a breakdown.

Colonel GRATCH. It is in the attachment to the handout sir.

General DRUEN. The majority of accounts run over \$100,000. There is only one Air Force account that is running over \$200,000 at this time.

The CHAIRMAN. One account over \$200,000. Most of the accounts are \$100,000 or more.

General DRUEN. Yes, sir. As of May 5, we had 1 over \$200,000, we had 8 accounts between \$175,000 and \$200,000, 26 between \$150,000 and \$175,999, 24 between \$125,000 and \$150,000; 31 between \$100,000 and \$125,000; and then it went for the next \$25,000 increments, 59, 59, 90 fall between the \$25,000 to \$50,000, and then about 128 below \$25,000.

The CHAIRMAN. I would like to point out to the committee members this is an allotment. This is the man's funds on which an annual interest rate of 10 percent is paid by the Government. This was done for all service personnel. It was stopped, though, when we withdrew from Vietnam, is that correct?

General DRUEN. In 1974, sir. In the final quarter of fiscal year 1974, it was terminated for the servicemen overseas. And also as I said in my testimony, it was limited to \$10,000 for the service members overseas. You could not put in more than \$10,000. So your account never ran over \$10,250 for a period of time. When it was terminated, you were allowed an additional quarter before you had to withdraw it, and that is the reason for the 90 days after the termination or change of status.

The CHAIRMAN. Mr. McCloskey, I think you had a question.

Mr. McCLOSKEY. I just had one question, General.

On page 11 of your testimony, you speak of the procedures that you would follow if there is a presumptive finding of death. You talk about notifying by letter the next of kin. Is that by registered return-receipt-requested letter?

Colonel GRATCH. Yes, sir.

General DRUEN. We need to know that they know of the status review.

Mr. McCLOSKEY. Just for the record, what was the basis for the court's action that held that the original Defense Department procedure was inadequate? It did not give due process to the beneficiaries.

Colonel GRATCH. There were several things, Congressman. One, the judgment said that the family should have full access to all of the information to be used in the status review, but the Air Force has always felt they have made this available. The big difference was they were given the opportunity to appear with counsel to be notified of the hearings so they could appear with counsel if they should desire, to represent their side of the case, or provide any information they felt appropriate that should be considered in the hearing.

Mr. McCLOSKEY. Had this been denied them under the original procedure?

The court doesn't generally give a restraining order unless it finds that the Government's procedures were inadequate. In what way were the Government procedures inadequate?

Colonel GRATCH. The decision of the court was that we did not go out by registered letter to say that the case was being reviewed and we did not offer the next-of-kin the opportunity to appear with counsel to present their side of the case, basically.

Mr. McCLOSKEY. Thank you.

The CHAIRMAN. Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman. I regret I had to go and attend another subcommittee meeting during the course of the testimony. But I read over most of the general's testimony. While I recognize the need, Mr. Chairman, of having this information before us. I question the objective of concentrating on the financial aspects of these cases. I think most of the families are more concerned with what we are doing about finding pertinent information than what is under the statutory remedies that are available to them by way of funds that are due to the missing men. And I hope that we are going to be concentrating our effort in that direction.

The CHAIRMAN. Would the gentleman yield? There have only been two or three questions asked, and I did it for the record. I think we have a responsibility to point out the financial aspects. The gentleman will also note that when Mr. Foley testifies on behalf of the National

League in a few minutes, his statement will also touch on the financial aspect. So this is not a subject brought up entirely by our Department of Defense witnesses. It is also of concern to the National League of Families. Certainly it is not any feeling of the committee or the chairman that the money has any effect. But I think it certainly has to be put in the record, in that we also have received letters from widows of killed in action, who requested that their status be looked at, and that their financial situation be considered.

So I think the committee is in order to do this. There have only been a very few questions pertaining to the financial situation, which happened to come at the very end when the gentleman returned to the hearing. More substantive matters of interest to the gentleman were discussed during his absence.

Mr. GILMAN. Mr. Chairman, I recognize the ultimate objective as being a sound one, to get all of the information before the committee. I make this statement merely to try to emphasize what the most important objective of this committee is. I would like to direct a question to the panel.

Some recent criticism has been directed to the administration with regard to the failure to release classified documents. Are there still documents not available to the families with regard to the missing?

General DRUEN. Yes, sir, there are. There are some pilot authentications that are still classified. Since becoming the commander of the Military Personnel Center, we have been in quite an extensive declassification project. And to date, we have declassified 95 percent of the material, over 7,000 documents have been declassified. But there are some items such as personal authenticators that have not been declassified, and some other information that has not been available, through State, that they have not declassified.

Mr. GILMAN. The State Department has some documents you have not received?

Colonel GRATCH. No, sir. We have the documents. They are still in a classified version. We have requested of the State Department that they declassify it. It is beyond our jurisdiction to declassify it. So in a case like this, we have to go to the originating agency, and request that they declassify the documents. However, I would also like to point out if it contained substantial information pertaining to a family member, it was very firm information, it has been provided them whether it was classified or not.

Mr. GILMAN. I understand there has been some information that the administration has considered sensitive information, that they felt would be abhorrent to the families, that has not been released; is that correct?

Colonel GRATCH. Not to my knowledge.

Dr. SHIELDS. I think with regard to individual family members, some have requested that they not be given these details, and at the request of the individual family member, that information was not passed on with regard to a particular case.

Mr. GILMAN. With the exception of that, Dr. Shields, with the exception of a family member not making a request, are there some documents on which a decision has been rendered by the administration that they should not be released because of the sensitive circumstances, or the abhorrent circumstances in that file?

Dr. SHIELDS. No; I know of none. Information that applies to a particular individual of a personal nature regarding what happened to one particular individual, would generally not be made available to families at large. It would be made available to the family of that missing member, because this is personal information, regarding, for example, how a particular man died, or the circumstances—that would be passed on to the family. The family could make that public if the family desired.

I would also point out that even though we have declassified many documents, as the Air Force says in its own case, over 95 percent of the information which it has, has been declassified, we would not make all of them generally available to all family members.

We have unclassified information which we would not make available.

Mr. GILMAN. Why?

Dr. SHIELDS. Well, because of the nature of the material. Let me be more specific.

The generally vague, unsubstantiated reports of very doubtful validity would not be generally made available, because we see no useful purpose served in doing so. We feel that simply would add to rumors, would probably give erroneous information, and would really serve no useful purpose. We receive reports—for example, I received a comment from an individual who was a clairvoyant, indicating that a certain member of the Army, who was missing in Southeast Asia, was alive and had lost weight and now weighed 75 pounds. This was some years ago. This is a report. These reports are looked at and we keep all of these things, but to pass on that kind of information as a general policy would be foolish, I think.

Mr. GILMAN. Who makes that determination, Dr. Shields?

Dr. SHIELDS. The services.

Mr. GILMAN. Who in the services would make that determination?

Colonel GRATCH. Generally in the Air Force, the casualty people working in conjunction with the intelligence people.

Mr. GILMAN. That is a little vague. Could you pinpoint that a little more, as to who makes that kind of a decision?

Colonel GRATCH. In the case of the Air Force, I generally would be involved in that, sir.

Mr. GILMAN. You would make a decision as to whether the family should or should not have that unsubstantiated information?

Colonel GRATCH. Right, sir. As I say, we work in conjunction with the intelligence community, to see if it could pertain or could not pertain. We check with the other services to make sure it doesn't apply to some of their members.

Mr. GILMAN. Do you keep files on the unsubstantiated information?

Colonel GRATCH. If it could possibly apply, there is possibly a working file kept of it. If it doesn't pertain at all, it is discarded and removed from the file.

Dr. SHIELDS. It is kept in a general repository. We will always have access to that information.

Mr. GILMAN. Does this committee have access to that information?

Dr. SHIELDS. Yes.

Mr. GILMAN. Has that been made available to the committee?

Dr. SHIELDS. I don't know to what extent requests have been made, but I know some of this information has been requested and provided. We are talking, Mr. Gilman, about thousands of documents.

The search would be extremely voluminous. Another reason of course concerns the way in which we would make dissemination of this material. Much of this material requires background knowledge.

Mr. GILMAN. I am not talking about dissemination at the moment. I am talking about the information and its availability to the committee.

Dr. SHIELDS. Yes; it is available without any question.

Mr. GILMAN. How many classified documents are we talking about still remaining in the classified category that have not been placed in the missing men's folders?

Colonel GRATCH. We completed declassification of over 7,000—I would have to just give you a ball-park figure.

Mr. GILMAN. 7,000 you declassified.

Colonel GRATCH. Yes, sir. That is 95 percent of what we have.

Dr. SHIELDS. Not all of these would necessarily go in a folder, though.

Mr. GILMAN. I have been informed that the classified documents range anywhere from 12,000 to 40,000. What I am trying to seek from you is how many classified documents are there still in existence with regard to the missing persons?

Colonel GRATCH. I can only answer for the Air Force.

Mr. GILMAN. How many do you have in the Air Force?

Colonel GRATCH. A little over 7,000.

Mr. GILMAN. That are still classified?

Colonel GRATCH. No, sir, that have been declassified.

Mr. GILMAN. I am asking how many there are.

Colonel GRATCH. I would have to do some research—7,000 is 95 percent.

Mr. GILMAN. Dr. Shields, let me ask you—how many classified documents are there with regard to the missing in all the branches of service?

Dr. SHIELDS. We would have to provide that for the record, Mr. Gilman. I am just not sure.¹

Mr. GILMAN. Can you estimate—give us an estimate?

Dr. SHIELDS. We have a total of well over 1 million documents relating to the missing problem generally. I would have to go back and look. I don't know without looking at the record, and without making an accounting, I would have a very hard time giving you any number.

Mr. GILMAN. You and I sat at a recent conference in which a 40,000 figure was utilized, indicating 40,000 classified documents. Is that a correct figure?

Dr. SHIELDS. I didn't use that. I don't know whether it would be or not. I would suppose that—if we are talking about intelligence reports, we have to distinguish between internal memorandums, between—

Mr. GILMAN. I'm not categorizing. I am not saying what are classified. I would like to know how many classified documents you have.

Dr. SHIELDS. I don't know, Mr. Gilman, I have no idea. But I do know this, and I will emphasize this—families have been given all information pertaining, in the judgment of the services after their own analytical efforts, to their individual missing members.

Mr. GILMAN. But that is based upon your decision and your conclusion as to what they should be entitled to and what they should not.

Dr. SHIELDS. It is, indeed. We must make those judgments because we have a responsibility to all families. I will comment again. I believe you were out when I mentioned this: We received an intelligence report regarding two Army service members. We felt that this report was erroneous, but it was an interesting report because it mentioned those two individuals by name. We passed that information on to both families. We also gave them our judgment, which was that that report was not valid. Now, we were criticized with regard to part of that information at least because we passed on information which we believed to be invalid. We have been criticized many times for coming to families with information which had not been thoroughly analyzed, which had not been thoroughly scrutinized, and which may or may not have been true. If we pass on information which says—this individual was shot, these men were executed—someone says, what is this based on? And we say, "It was simply a report, and as a matter of fact, we took a lie detector and examined the individual, the lie detector indicated he was not telling the truth."

There is very little benefit to anyone to be achieved and to be received from passing on that kind of information. You and I sat in a meeting very recently in which a memorandum which I wrote to service members had been passed on to individuals who were not on the list of addressees. It was not a classified document. The information, however, was of a technical nature, and the interpretation of that document was entirely incorrect. Now, that is another problem. You have to have background information and you must possess some kind of foundation upon which this information can be assessed. To pass on information and rumors simply for the sake of making information available, I think would be irresponsible and I don't believe we are going to do it. It is information that is available to the committee and the committee can judge. And if those records are subpoenaed or we have to make them available under the Freedom of Information Act, we will but very little purpose will be served. And I will tell you that much of that information is extremely negative. If we were to base our judgments about the status of a man on that information, many individuals who are now carried as missing would be declared killed in action.

Mr. GILMAN. Mr. Chairman, I would like to request that, at this point in the record, Dr. Shields make available to the committee the statistics with regard to the number of classified documents that are available to the Department of Defense, and have not been made available to the missing, or to this committee, and break it down by services, with your permission, Mr. Chairman.

The CHAIRMAN. By number? I don't think we have enough money to print all that.

Mr. GILMAN. I am asking that the statistics of the number of classified documents be included in the record.

¹ At the time of publication of this hearing, DOD was still in the process of researching this problem.

The CHAIRMAN. Without objection, so ordered.

Can you do that?

Dr. SHIELDS. We will certainly endeavor to do it. It will be a very lengthy procedure, because we will have to examine well over 1 million documents. It will take a great deal of manpower to do it, but we will certainly do our best.

The CHAIRMAN. Would the gentleman yield?

Dr. Shields assured the committee, and the other service representatives also did, that they would give us any of the information that we wanted on individual cases. And I accept that is what he will do.

Mr. GILMAN. Mr. Chairman—where are these documents kept, these million documents?

The CHAIRMAN. We kept one of them in our safe, and caused some problems ourselves, quite frankly.

Mr. GILMAN. I would like to know where the other 999,999 are kept.

Dr. SHIELDS. Mr. Gilman, they are in the records of the CIA, they are in the records of the DIA, they are in the records of the Prisoner of War, Missing in Action Task Force, the Joint Casualty Resolution Center, they are in the records of all the military services in their casualty files.

Mr. GILMAN. In other words, they are spread all over the lot.

Dr. SHIELDS. Yes; they are.

Mr. GILMAN. Mr. Chairman, I raise a question as to how our committee goes about examining these documents. They may be available to us. But I think it would take us another 10 years to try to examine those documents in that present state of affairs.

Dr. SHIELDS. Mr. Gilman, this must necessarily happen. We have four military services. They are charged by law with administering the affairs of their individual service members. They must maintain these files. The Joint Casualty Resolution Center is a joint organization which is charged with the task of finding out what happened to all of the service members. We don't have a Graves Registration Office of a Resolution Center for each of the four military services. That casualty center must operate with records. The only way we can do that is to have records available, so that they will have access to them. My office also must maintain its own affairs. We have responsibilities in this area. I know of no way in which we can consolidate these records. The law has provided for different intelligence organizations. They must maintain their record base also. If we had one single responsible authority, we could consolidate all of those records, and they would be available.

I think the problem for the committee staff really is not where these records are located, but rather the number which they would have to examine.

Mr. GILMAN. Mr. Chairman, I might just for the record like to comment that yesterday for the first time, at a meeting in which Dr. Shields and I were present, I learned to my amazement that there were a substantial number of classified documents that have not been examined by either the committee or the families. And I have always been under the impression, and maybe I have been under a misapprehension, that these classified documents were assembled in one place, and that our committee could go to that area, or any member of the committee, and examine these. If I for one as a member wanted to examine all of the documents

in some of the missing folders, from people in my own area, I no longer learn I would have to visit at least 4, 5, maybe 10 different agencies, in order to examine them.

Dr. SHIELDS. No, Mr. Gilman, many of these records are duplicate. We would assemble them for you. We have assembled them. We have provided committee staffers with all of the documents that we have pertaining to an individual.

Mr. GILMAN. Then I do not understand you, Dr. Shields. Are you saying now that all of this information is being assembled at one place where we can all go and examine it?

Dr. SHIELDS. Yes. Your committee staff makes a request for it and we provide it.

Mr. GILMAN. That is on a file-by-file basis, you say. Suppose at any time I wanted to go down and examine all of the unclassified documents. Where would I go to examine those?

Dr. SHIELDS. You would have to ask us to collect them for you.

Mr. GILMAN. And then you would have to bring them in from all of the agencies.

Dr. SHIELDS. That is correct.

Mr. GILMAN. How many agencies would be involved?

Dr. SHIELDS. We would check with the State Department, with the CIA, with the DIA, with the military services. Those are the agencies that we would request cooperation from.

And then we would gather that material together.

Mr. GILMAN. Roughly, we are talking about over 4,000 classified documents?

Dr. SHIELDS. I don't use that number. I said we would try and provide that for the record. I don't know how many documents we have classified. We have never indicated that we have freely made classified information available to all family members. We have said when classified information pertains to an individual, that that information is made available to that individual's next of kin. That is correct. We do not make information that is classified with regard to one man available to the families of other men. For one thing, it would be a violation, I think, of the Privacy Act, so we don't do that. This committee is exempt from the Privacy Act. They would have access to that information. We have documents which are still classified, which may pertain to very nebulous reports. We have not furnished those to the family. When they are declassified, we don't plan now to furnish them to the family members.

Mr. GILMAN. Mr. Shields, I would hope that you will be considering a more expeditious declassification procedure, as assembly of the documents into one area, in order to assist our committee in its endeavor.

Mr. Chairman, I would hope that our committee will address itself to this problem at a subsequent meeting.

The CHAIRMAN. Quite frankly, Mr. Gilman, we haven't had the problem. And I would like to commend the league. They haven't tried to overburden us with every individual case. The good, hard cases we have been able to get the complete information on. I am sure you could find an example of one small bit of intelligence that could apply to anyone of 300 to 400 missing servicemen on a given date that might not be in each individual file, if you are really trying to stretch

point. But basically everything about the man is in his record, isn't that correct?

Dr. SHIELDS. Yes, sir. And I don't believe we have had any requests at all from the staff that we have not been able to comply with. I don't know of any. I don't know of anything we have been unable to do with regard to requests made by the committee staff.

The CHAIRMAN. One of the problems we got into—we kept a file that I mentioned in the Select Committee's safe, and new information was not put in the file because we had the file that they wanted to put it in. By our keeping the file, it was not kept updated. I haven't seen any problem there. We don't have a staff big enough to go through the entire 2,500 cases. But we do have enough staff, and we have taken the hard cases, and you have been with us, and you have seen some of them. I think it has sufficient information in it. I just haven't found a problem, Mr. Gilman, of receiving the information we need to do a thorough job. Our problem is in Vietnam.

Mr. GILMAN. I would hope we are correct that we are getting full cooperation. I would anticipate that we are getting full cooperation. But if we are going to fulfill our objective in providing an exhaustive accounting, I think the place to start is with our own agencies, to make certain that we are getting full information on which to make a meaningful determination. And it is for that reason that I hope that we will further explore this area at a subsequent meeting.

Mr. McCLOSKEY. Will the gentleman yield?

Mr. MacDonald, how many cases have we specifically requested from the Defense Department where a relative has asked us to inquire into a specific case?

Mr. MacDonald. I would have to estimate the number, Mr. McCloskey. We requested initially the 36 cases of the actual POW's. We have requested on your behalf another 30 or 40 cases, and then the staff has separately requested some. I would put the figure somewhere between 75 and 100 cases.

Mr. McCLOSKEY. We have your assurance that on those case files we have been given everything, classified or unclassified, unsubstantiated, uncorroborated, uncorrelated, is that correct?

Dr. SHIELDS. As nearly as we can say it may relate to that case, yes.

Mr. McCLOSKEY. You mentioned these classified documents, that if we examined, would be negative in nature.

Could you give me an example of what would be negative that we have not seen, general information?

Dr. SHIELDS. I think reports that men were killed or information such as recently passed on that General Druen referred to. These reports were passed on to the families very recently, with an indication that they were unsubstantiated, and may or may not pertain to these individuals. One of the reports indicated that one of the men could have been killed.

Mr. McCLOSKEY. While in captivity?

Dr. SHIELDS. While in captivity. We have that kind of information. I will give you another example of some reports that I am talking about.

We would hear an intercept, for example, over the radio between two military units in North Vietnam, one saying to the other, "We just shot down an F-4"—at this particular time, in this particular location,

and the crew members were killed. We examined our records, and there was no loss at that time in that area at all. This is simply one unit boasting to another unit. It has no validity whatsoever. We have never passed that on to family members. That would be negative information, if you could correlate it with anyone, which we have never been able to do. But I would say beyond that, that we have invited staff members, and they have come over to our offices in the Pentagon where we have had our weekly intelligence evaluation, in which we have run down and discussed some of these uncorrelated reports. I really don't think that we have had any requests for information that we have not been able to comply with. I think the problem again is in the sheer volume, the numbers, and how you handle that, I suppose, is up to the committee. It would take vast numbers of people to go through all of these individual documents.

I sent over, for example, the file, of three individuals just a few days ago, and the stack of paper was about 8 or 10 inches high—three men. This is the kind of thing, Mr. Gilman, we are talking about.

The CHAIRMAN. Mr. Gilman, what would they be hiding? It has been 9 years now.

Mr. GILMAN. Mr. Chairman, I don't want to infer that the agencies are with any intention keeping this information away from the public. But I think because of their elaborate classification system, and because of the voluminous amount of material that has been collected that there hasn't been an adequate updating, an adequate review, an adequate summary made, so that our committee's limited staff could make use of this material and information, so that we would have an adequate basis to make a determination for a full accounting. And I think until we have that summary, I will always have some question in my mind as to whether we have had an exhaustive accounting.

I am hoping that somehow, Dr. Shields, you will give some thought to the further declassification, and the summarizing of this information, so that our committee can properly utilize it in its limited time and with its limited staff.

Dr. SHIELDS. Mr. Gilman, with regard to summaries, we have that. We have information that we can summarize with regard to each individual.

Mr. GILMAN. I don't want conclusions. What we are asking is the facts, a summary of the facts.

Dr. SHIELDS. That is what we have summarized. There have been no conclusions. These men are still carried as missing and prisoners. I think the problem is not the summary.

The summaries are what families are complaining about. I think what the families want are the individual documents, and I think that is the problem. I think the problem is examining over 1 million documents. I don't know how, other than bringing together the manpower to do that, you can handle that without summarizing it. We have done that, and that hasn't been satisfactory.

Mr. McCLOSKEY. Mr. Chairman—

The CHAIRMAN. If there is no objection, after you, we will move on to the next witness.

Mr. McCLOSKEY. I don't want to belabor this point, Dr. Shields. I don't think we have seen any instance where every armed service officer involved hasn't broken his back to try to do his job. I don't

think anyone hasn't recognized his specific obligation. But I just want to relay to you that I was terribly distressed last Saturday to find a lot of very decent, forthright American people who may be unfairly ascribing to the Defense Department their dismay over Watergate and the CIA and the Gulf Oil Co.—but a very real feeling in that room, 50 or 60 relatives, that Armed Forces officers had lied to them. And this is a terrible situation. And I think what the committee has to do, and I intend to do personally, in each case that a relative has raised a question about a lack of information, that we go over these files carefully.

Unfortunately, I haven't done what I hoped to do 2 months ago because of this Law of the Sea Conference. But I think we will go through it. And I am perfectly prepared to make an individual assertion on the basis of that file whether the person should be presumed dead or not. I realize that cannot affect your decision. You have to go through it separately. But I think we have to resolve this concern of the people that they have not gotten the full information. I hope you will bend over backward when these files are requested of you, because we cannot go on telling people we have done everything—we cannot leave this area with any person having any slightest reservation. And I just say that in conclusion—because there is no need to be defensive about it—we will go through every case—as long as we have your cooperation. As I say, I have never seen a situation where the services themselves have attempted to do as much to try to resolve these issues. I am kind of in the middle between what Mr. Gilman is saying and what the chairman is saying. I want to end this problem for all time.

The CHAIRMAN. When we hear from individual families, next-of-kin, the staff has tried to follow up on it, and you have also done it. Am I correct in saying that some of the families don't want the files opened up? They don't want us to investigate them and go into them? And this is a fair share of the 800. So it is not every family out there that wants us to tear into these files. I might say to Mr. Gilman, when we set up this committee, we knew we were not coming up with a complete report of factual information on what happened to all these Americans. It is an impossibility. War is terrible. They are flying fast aircraft, they are loaded with explosives. And it is information you just cannot get. It is a faraway land. We cannot even get in there now. So it is a tough job. But we can generally develop credible data, is what I am saying.

When we set up this committee, we knew we were not coming up with all of the answers of what happened to these missing-in-action. We have never done it in any war we have been involved in. And we won't do it in the next war that we become involved in. It is an impossibility.

Dr. SHIELDS. Mr. Chairman, let me just say for the record that the Department of Defense endorses what Mr. McCloskey has said 100 percent. Far from being defensive about it, we want the record to read very clearly and very openly that we have done everything in our power to account for these men. We welcome this committee, because we felt that we needed a neutral and impartial group, with your stature, to examine the record and to see whether in fact we have done what we have said we have done. So we welcome this. We have a prob-

lem, of course, in that there are only certain kinds of things which we can do. We will never be able to convince family members who want to think otherwise, and neither will this committee, that everything has been done, that we have been completely open. We have had cases and we have one now where remains have been recovered and have been identified by experts, including experts who are not within the Defense Department, where these remains have been unaccepted by family members.

Mr. McCLOSKEY. Let me point out one question, though, that you have answered in previous testimony, that I really do deem unsatisfactory.

I asked a question at the hearing several months ago as to whether or not you had the battalion diaries, the intelligence order of battle information about infantry units engaged in combat with an enemy. And I have seen those order of battle statements. There has never been any question about identifying which VC regiment or NVA regiment was operating in the area against an infantry battalion. And yet your response to me was you had no way in the Defense Department, if a man was lost June 6, 1969, in the 1st Battalion, 5th Marines, of finding out what units were operating in this area at that time. That is incredible to me, because you keep diaries, information about intelligence reports. There is no reason why when a man is missing in action in an infantry operation we cannot furnish to the North Vietnamese what infantry units were presumed to be operating in this area. That is how we would follow it through. If anybody asked us what happened to somebody the 5th Marines captured on July 29, we would go back to the unit diaries and find out how many people were captured by us on a given date, if any. If there is one thing the Vietnamese kept, it was adequate records.

Dr. SHIELDS. We will endeavor to give you a more satisfactory answer. We went to our military experts. This was the answer passed on to us. We will try again and try to give you more complete information.

The CHAIRMAN. Thank you, Dr. Shields.

The CHAIRMAN. Our next witness will be Col. Earl P. Hopper (Ret.) executive director of the League of Families.

Colonel Hopper's term of office as executive director of the league expires on August 1. He will be replaced by Carol Bates, presently his administrative assistant.

We, of course, have had our problems in working on such a trying situation as we have, but Colonel Hopper has been fair with the committee and has worked with us and we are always glad to hear from him and representatives of the National League of Families.

STATEMENTS OF EARL P. HOPPER, EXECUTIVE DIRECTOR, LEAGUE OF FAMILIES, ACCOMPANIED BY DERMOT G. FOLEY, LEGAL ADVISER, NATIONAL LEAGUE OF FAMILIES OF AMERICAN PRISONERS AND MISSING IN SOUTHEAST ASIA

Mr. HOPPER. Thank you very much. Mr. Chairman.

Mr. Chairman and members of the select committee, I am very pleased to appear before you today as a representative of the National League of Families to provide testimony on status changes. I hope

my testimony will provide you with the understanding of the feelings of the POW/MIA families in reference to status changes as well as provide understanding of the reasons the families have resisted the military services for 3 years in their attempts to declare our men dead. I want to express my personal appreciation to you for allowing me this opportunity. I have a statement I would like to make and some written testimony which I would like to submit for the record.

For the past 2 years at annual meetings of the National League of Families of American Prisoners and Missing in Southeast Asia, league members in attendance have voted overwhelmingly to oppose the changing of status of any American, military or civilian, from prisoner of war or missing in action status to a presumptive finding of death status. The only exception to this would be if factual proof was provided, or extensive documented search effort was made, to support such determination.

The present policy of the Defense Department allows the next of kin of a prisoner or missing man to request a review of the man's files by the military service to determine if sufficient information is available which permits a status change to presumptively dead—KIA—Finding of Death. It is the position of the National League of Families that the POW's and MIA's civil rights and his right to life are violated by such action. The man himself is not represented at the hearings of these reviews and, although his next of kin may be present to represent him if she/he chooses to do so, often old information which indicated the man was alive and captured is disregarded. Inadequate or incomplete information is presented which results in a change of status—and this has been done.

Under the Constitution of the United States a citizen of this Nation has the right to life, therefore, arbitrarily taking those rights away from that citizen—especially in absentia—is a gross violation of the intent, purpose, and provision of the Constitution. The old argument that these same or similar procedures have been used in past wars does not negate the protection afforded a U.S. citizen today under the provisions and protection of the Constitution; nor does the cosmetic representation of the man by the presence of the next of kin negate this assured protection. It should be noted here that in those cases where the next of kin cannot be present at the hearing the man is not represented by anyone interested in protecting his rights. The following substantiating points are presented to support the league's request to suspend the provisions of sections 555 and 556 of chapter 10, title 37, of the United States Code:

(1) These sections may have served well in previous wars and armed conflicts when, at the end of hostilities, there could be unrestricted, unhampered and detailed search of the battle area for the missing and the remains of those who were killed or who died. Such is not the case in the aftermath of the Vietnam war nor was it the case entirely at the end of the Korean conflict. Passage of time without additional information being uncovered to indicate a man is alive as a single criterion, or even as a strong criterion, added to unchanged information known for some years, is not sufficient reason to reclassify a POW or MIA to presumptively dead. A paramount requirement which must be considered in the whole is that of making a serious effort first to conduct an exhaustive search of the area of disappearance

of last known location. This was assured by DOD and State Department in January 1973. History provides the proof that the Communists—Russia, China, and Vietnam—have and will hold prisoners of war after hostilities have ended and prisoner exchanges made!

(2) The individual right of the POW or MIA to remain in a living status until there is factual evidence uncovered to establish his death, or until exhaustive search fails to reveal his status, is not protected under existing statutes. These statutes permit a review to be held at the discretion of the Service Secretary, or his designee, primarily based on lapse of time and the probability that no additional information would be forthcoming. As presently administered, the policy allowing the next of kin to initiate a review without new or additional information being available is wrong and grossly violates the guarantees of the rights of the subject man.

(3) All families who have loved ones missing, and obviously you as well, have the greatest of compassion and empathy for those primary next-of-kin—wives, children, and parents—who have grown so tired and frustrated of this situation that they seek relief of their frustration and, as difficult as it may be, will request the Service Secretary to conduct a review of their loved one's case. As previously stated, such a review would be based upon "available information" which, in most cases, had not changed over the 4, 6, 8, or 10 years that a man had been carried as prisoner or missing. The lapse of time of absence, plus the likelihood that no new information on that man would be forthcoming, cannot be justification to change the status of that man regardless of the feelings of the next of kin. Having said this, it must be emphasized in the strongest possible terms that a change in status based upon these criteria abrogates the rights of the POW or MIA. The league feels that every man who is carried as a POW or MIA should be considered alive until evidence is produced to the contrary and until every effort has been exhaustively made to account for him through determination of his fate.

The board of directors of the National League of Families in its efforts to protect the rights of our prisoners and missing men, in an unanimous action on November 15, 1975, voted to request the President of the United States to issue an Executive order suspending the application of the present statutes of the United States Code whereby reviews are held on men still listed as prisoner or missing. These reviews, in nearly every case to date, have resulted in a change of status to presumptively dead. Of course, an obvious exception to the requested suspension would be if there is new or additional information revealed which would warrant a review.

Based upon guidance and information we had received, we pursued these efforts in a letter to Secretary of Defense Rumsfeld on April 1, 1976, and in a reply from the Department of Defense on April 9, 1976, our request was denied. Yesterday, May 11, we carried our request to the White House and met with the President's staff in further attempts to obtain an Executive order. We do not yet have a reply to our request as a result of that meeting.

Now, Mr. Chairman, I would like to review some of the history of status changes since the signing of the Paris agreements in January 1973.

This brief review, I believe, will provide you with the unpublicized activities of our families and the reasons for those activities.

I wish to refresh your memory on two statements made in January 1973, a few days before the signing of the Paris agreement.

The first statement was made by then President of the United States, Richard M. Nixon, on January 23, 1973, in an address to the Nation on television and radio. I quote:

Within 60 days from this Saturday, all Americans held prisoners of war throughout Indochina will be released. There will be the fullest possible accounting for all of those who are missing in action. During the same 60-day period, all American Forces will be withdrawn from South Vietnam.

The second statement was made the following day, January 24, 1973, by Dr. Henry Kissinger, present Secretary of State and the chief negotiator for the United States of the Paris agreements. Dr. Kissinger's statement was made at a press conference at the White House, and I quote: "The return of American personnel and the accounting of missing in action is unconditional and will take place within the same time frame as the American withdrawal."

These two statements, one by the former President of the United States and the other by the present Secretary of State, were obviously deceitful lies to the American public and to the families of those Americans unreturned. Proof of this is that the Department of Defense was soon publicly stating that statuses of the unreturned men would be changed from POW or MIA to presumptively dead. As evidence of this, I would like to quote another statement, this time by Dr. Roger Shields, Department of Defense, in a briefing on April 12, 1973. It is important to note here that the date of April 12 was less than 2 weeks—I repeat—less than 2 weeks following the return of the last prisoner of war. I quote:

In cases where we are unable to find any information with regard to a man, there is no indication that a man may be alive, and we don't have a realistic prospect of receiving more information, a presumptive finding of death will be made. It is not our intention to continue a man in a missing status and to continue carrying the family in that state of anxiety and uncertainty.

There is no reference here that the much publicized area searches would be made prior to determination of death, and certainly there was no accounting for the missing in action during the same 60-day time frame as our prisoners were returned. Further, no time frame for an accounting is specified in the Paris agreements, yet DOD was anxious to start declaring our men dead as soon as possible!

The fact that DOD was going to wipe our men out through status changes was further brought to light in Alameda, Calif., on May 12, 1973, when Gen. Russell Ogan, head of the DOD, POW/MIA task force, addressed a large group of POW/MIA families and told them that within a year from that date, all men who had not returned would have status changes to presumed dead. A transcription from a tape recording I made of General Ogan's statement, with his permission, is on file in your committee staff office. I have the original tape which is also available to the committee.

Mr. Chairman, I have a general outline of the chronological order from April 1973 to date, which highlights the status change situation which I would like to submit for the record, but summarize only in my statement.

The CHAIRMAN. Without objection, it is so ordered.¹

Mr. HOPPER. Thank you.

I have mentioned occurrences in April and May 1973, the statement by Dr. Shields and the one by General Ogan, which, later in May, caused the first reaction by the families. Late that month, a group of families from Arizona met in Los Angeles with a group of families from California and Mr. Dermot Foley to discuss the possibility of gaining a restraining order to stop status changes. Mr. Foley is an attorney from New York and also the brother of a missing man. We felt strongly then, as we do now, that the law under which status changes were being made was unconstitutional—a fact later to be proven correct. From this meeting, a decision was made that we would, as individual families, raise the money to go to court to stop status changes. The National League of Families, as an organization, remained neutral on this legal action and neither endorsed nor opposed it. In fact, the League has never been a party to any legal action against the U.S. Government.

On July 10, 1973, the *McDonald v. McLucas* complaint was filed in the U.S. district court in New York. The Federal court issued a temporary restraining order stopping the service Secretaries from making status changes for a period of 10 days. The case was then referred to a three-judge court in New York for hearing and an issuance of a decree.

August 6, 1973, a temporary restraining order was handed down which stated that the only reviews the service Secretary could make were those requested by the primary next of kin in writing.

On March 11, 1974, a year after the return of the last prisoner of war, the court issued its final decree lifting the restraining order, but ruling the law unconstitutional, both on its face and the manner in which it was being used. The court further outlined steps which could be followed during reviews which, according to the court, apparently satisfied the requirements of the Constitution and allowed the service Secretaries to proceed. We did not agree with this decision and an appeal prepared to be made to the Supreme Court. It still did not protect the rights of the missing man.

In April 1974, within a month after the Court's final decree, casualty officers from the military services started telling families that reviews were to be initiated in the near future. New regulations were drawn up by each service, notices of hearings were mailed out, and plans made to start having reviews and status changes.

During April and May 1974, a number of families were notified of hearings to be held on their men. In some cases, only primary next of kin were allowed to be present with the secondary next of kin excluded. During these 2 months, a number of nonsolicited reviews were held and status changes made. Some of these were contested by next of kin, and others were not.

In May 1974, when family members became aware of the decision to resume status changes, various ways were sought to halt unwarranted PFOD's. The one most effective was through the good graces of some of our friends in Congress. Specifically, I contacted Congressman John Rhodes of Arizona and Senator Barry Goldwater of Arizona, requesting their help and asking them to discuss this matter with

¹ See p. 234.

then President Nixon. Mr. Rhodes and Mr. Goldwater did talk to the President who was reportedly dismayed over this situation and promised to look into it for the families. Finally, Congressman Rhodes and Senator Goldwater reported that no status changes would be made unless requested by the next of kin. This action is documented in my written statement to the committee submitted for the record.

During this time, appeals of *McDonald v. McLucas* were being made to the U.S. Supreme Court. Not knowing the results of that appeal, DOD primarily made status changes when requested by the next of kin or, in some cases, where they were reasonably sure the family would not object. Some primary next of kin were contacted by the military services and encouraged to request reviews. Some did so, and later regretted it.

On November 11, 1974, the U.S. Supreme Court determined they would not rule on the decree issued by the three-judge court in the *McDonald v. McLucas* case, thereby upholding the March 11 ruling.

During the period of November 1974 to July 1975, status reviews were held and status changes made primarily at the request of the next of kin. Unofficially, DOD held off on making nonsolicited status changes because of several bills introduced in Congress involving the POW/MIA situation. One of these bills had to do with status changes, and another was your House resolution, Mr. Chairman, H.R. 835, which established this committee, and you recall our problems on that. Bus Mills and I finally met with the Speaker of the House to move it from the Rules Committee to a floor vote.

However, by July, the legislation seemed to be bogging down—your resolution was being held up in the House Rules Committee and Congress did not seem to be eager to get into status change hearings until it knew what would happen on the formation of this Select Committee. Also, the President, in the meantime, had turned down the League's request for the formation of a presidential task force to investigate this entire issue. So the outlook for all of this was bleak and DOD was eager to again start declaring our men dead.

By accident, Bus Mills, my predecessor, and I learned of a plan by DOD to start, again, making unrequested status changes in chronological order of incident. Apparently the decision was made, but the timing had not been determined. From what we could learn, DOD did not know whether it should be announced during the time of the League's annual meeting here in Washington in mid-July, or wait until after the meeting and the families had returned to their homes.

When we confirmed that this plan was in fact in being, I again called upon my good friend, Congressman John Rhodes, and explained the situation to him. I appealed to him again for help in stopping status changes of our men and within the hour they were stopped. I would like to say here that I personally and the League as an organization are, and always will be, forever grateful for the understanding and friendship of John Rhodes. He has helped the families and our prisoners and missing men in a manner that is not commonly known—and he has done so with no political motive and little publicity. I am proud to have such a friend in Congress.

The CHAIRMAN. Mr. McCloskey will have to leave. Do you have any objection to interrupting your testimony for a question from Mr. McCloskey before he leaves?

Mr. HOPPER. Not at all.

Mr. McCLOSKEY. I have a meeting with a group of Congressmen at 11:30 on a matter of the House.

Has the procedure as outlined to you for status changes that the Defense Department outlined today that they would follow pursuant to this, do you have any objection to the procedures?

Mr. FOLEY. We have about 16 all written out nicely here that we can present to you.

I have a very, very brief statement that I can put in here that will take a matter of a few minutes to put in the record that will outline from my standpoint much more what is at stake here.

Mr. McCLOSKEY. I will try to come back.

Do we have a copy of your statement?

Mr. HOPPER. No, sir, but we will supply one.

Mr. FOLEY. What I am doing is focusing today only on what I see is objectionable from the standpoint of a lawyer in the present manner in which determinations of death are made. This is by no means the end of what I would like to ultimately offer this committee, but on the specific legal issues respecting today's discussion, I am ready now.

At some future time I would like to put in some additional material but that is another point.

The CHAIRMAN. I think the committee can go until we have a quorum call which will probably be about 12:15.

Mr. HOPPER. And finally, Mr. Chairman, I believe you know the rest. Following the formation of this committee and a meeting with DOD officials, it was unofficially agreed between you that status changes would not be made, except those requested by the next-of-kin or those proven cases, until your final report is completed and filed with the House.

I would like to request at this time, Mr. Chairman, that Mr. Foley be permitted to make a statement.

Mr. FOLEY. Mr. Chairman and members of the committee, to begin I wish to thank you for this opportunity to testify before the House Select Committee on Missing Persons.

Our organization wished to contribute to the record at this time because we understood that statements were to be heard today from Defense Department representatives on the subject of determinations of death under the Missing Persons Act, 37 U.S.C. sections 555 and 556. My comments are also addressed to those determinations.

I am the Legal Adviser of the National League of Families of American Prisoners and Missing in Southeast Asia—hereafter referred to as the "National League of Families." Also I was plaintiff's attorney in *McDonald v. McLucas*. In that case a Federal court had occasion to examine the procedures so glowingly described by the general who testified this morning, and found them violative of constitutional rights. At present I represent MIA families in two other actions now in court, and in one of them I also represent the National League of Families.

The National League of Families is the only national organization of the families of American POW's and MIA's of the Vietnam war, and has functioned as such since 1970.

Our members have a direct and substantial stake in these determinations of death and we are unalterably opposed to the present system.

of making them for reasons which I shall describe in more detail below. At present we are heavily engaged in efforts to remedy our objections. In addition, serious doubts and challenges have been raised respecting the constitutionality and legality of the Missing Persons Act, not merely on its face, but also in the manner in which it is applied.

These doubts and challenges have focussed, in the main, upon the due process requirement of the U.S. Constitution—no citizen is to be deprived of life, liberty or property without due process of law. On its most obvious level, two groupings of protected property interests are affected by determinations of death. One is the pay and allowances of the subject MIA which are terminated by this determination. The other, which is completely separate and distinct, is the allotments from such pay and allowances which are paid to next-of-kin who were specifically designated for that purpose by the subject MIA. They have a separate, distinct property interest.

It is important to keep track of the distinction between these two groups of protected rights because the Defense Department, in seeking to evade the consequences of a Court decision which it lost, has confused them without justification. Thus, whenever, a next-of-kin has been found who was a recipient of an allotment and who was willing to waive the due process protections that are incidental to that allotment, the Defense Department has assumed that such next-of-kin had the additional right to waive the separate and distinct due process rights of the MIA himself, and has proceeded with an administrative determination in which the rights of the MIA are not even considered. It has not even been questioned by the Department of Defense whether the interests of such a next-of-kin are in conflict with those of the MIA.

Apart from these legally recognized rights there are additional considerations which support our opposition to the present method of making determinations of death. The phenomenon of the missing man is not new. Indeed, it is historic and it has always been characterized by an uncertainty as to the facts which makes expertise a practical impossibility. Consequently, throughout the civilized world a set of minimal standards has evolved for dealing with these situations. These standards have been traditionally set forth in what have become known as "Enoch Arden" laws. Significantly, the administration of these laws has always been entrusted to the courts. The legislatures have recognized that the judiciary is well suited to make this terribly important decision with the detachment necessary to preserve respect for the governmental process.

Under the "Enoch Arden" laws a person desiring a determination of death can appear in court, after missing status has continued for a certain period of time, and request such a determination.

It is not free for the asking, however. The proponent has the minimal obligation of showing that a diligent search has been made and completed for the missing person, without success. It is only when this burden has been met that a determination of death may be obtained.

In the case of Vietnam, the search-and-accounting effort is still going on—or so we are told. Neither side has ever claimed that the sources of information have all been examined. On the contrary, every indication is that additional information does exist and may be obtained within a reasonable time.

In light of this, the Defense Department, our research indicates, is unique in the United States, and in apparent agreement with a small, disreputable bunch in Western society who are prepared to plunge forward, clearing up the paperwork with determinations of death made before the examination of known sources of information has been exhausted.

I would submit that this amounts to a charade. Let there be no doubt about it, if the Government really wanted to join the civilized world in considering death only after the search, it could and would do so. Its failure to do so is a matter of choice.

As indicated above, if there are to be status reviews which can lead to determinations of death, there are gross inadequacies and deficiencies in the present procedures which must be remedied if those reviews are to be more than a charade. The following are among the more significant problems presented by the Missing Persons Act and the relevant current service regulations:

(a) There is no provision for notice of the pendency of review to the MIA who is the subject of the review or to a representative of his without conflicting interests, and neither he nor such representative has any right to appear at or participate in the proceeding (the notice and hearing opportunity offered under the rule of *McDonald v. McLucas*) is directed only to next of kin who are, themselves, the recipients of governmental benefits, for the purpose of attending to their personal interests and such people frequently to waive a hearing—no one protects the rights of the subject MIA;

(b) There are no standards or guidelines which instruct or govern the service Secretary or his designee as to when and under what circumstances to convene a status review or as to whether or under what criteria to make a determination of death;

(c) Status reviews are authorized to proceed and determinations of death to be made while the search-and-accounting effort is still being actively pursued and before it is completed, or before known sources of information have been fully examined and the results have become known;

(d) There is express provision for making determinations of death in the total absence of any evidence of the actual fact of death;

(e) There is no adequate effort to marshal, organize, and present to the adjudicators of the fact of death, all of the relevant evidence and data now in the possession of or available to the U.S. Government (indeed, substantial data are ignored);

(f) There is express provision that any information which happens to be classified will be ignored by the adjudicators of the fact of death regardless of its nature or relevance. This is expressly set forth in Service regulations and is inconsistent with what was stated by witnesses here this morning.

Mr. GILMAN. Are you telling us, then, that in the adjudication process, none of the classified documents are available?

Mr. FOLEY. The regulations so provide. Absolutely. That is clear, and furthermore, it is specifically stated that they will not even be considered.

Mr. GILMAN. The adjudicator is a member of the Department of Defense.

Mr. FOLEY. Yes, it is the Status Review Board.

(g) No witnesses appear at a status review to testify and submit to cross-examination; instead, there are short written summaries of the Government's evidence in favor of a determination of death which cannot be tested for truthfulness, completeness, or reliability;

(h) There is no provision or opportunity for prehearing factual discovery;

(i) There are no rules of procedure and no rules of evidence whatever.

(j) Status reviews are so structured that they become prohibitively expensive for all but the very wealthy.

That is a serious problem. I have talked to lawyers who have gone through some of these reviews. We have been able to sit down with some professional economists in mind to see what is the least you can charge for doing one of these reviews, and it is astronomical because of the way the thing is structured.

As can be seen from the above partial itemization, the status reviews which the Defense Department seeks to impose upon all MIA's are a legal nightmare and a public disgrace. If allowed to go forward, the resulting damage will be irreparable.

There is little substantial difference between present practice, as described above, and what occurred before the ruling in *McDonald v. McLucas*. In that case, the distinction between the due process rights of the subject MIA and those of his next of kin was delineated. Relief was sought for both groups, separately, for a number of violations of constitutional rights, most of which are included in the above listing. Attached to the complaint was an exchange of correspondence which demonstrated how absolute and complete the abrogation of rights had become. A copy of that exchange of correspondence is attached hereto as exhibit 1.¹

Later, oddly enough, the Government sought to defend itself for the misconduct which it admits in this exhibit, by claiming that, no matter how gross it appears on its face, they really did not know that it was wrong, and hence, it should be excused—essentially, the I-did-not-know-the-gun-was-loaded defense.

In resolving the issues raised in the *McDonald* case, the Court dealt only with one constitutional violation and one set of due process rights. It held that a status review involves an adjudication of fact and that those adversely affected have a constitutional right to notice and hearings—a less than surprising conclusion, to be sure. The Court then held that this constitutional requirement was being violated, in the case of the next of kin receiving governmental benefits. No ruling was made, one way or the other, on the personal rights of the MIA's themselves or on the remaining issues raised on behalf of next of kin. Instead, the Court stated that consideration of those matters was unnecessary in light of the ruling that had been made and that the Court had a right to assume that the Defense Department would refrain from constitutional violations in MIA matters in the future.

The relevant reported decisions can be found at 371 Fed. Supp. 831 and 837 (S.D. N.Y., 1974). The measure of how ill founded was the Court's reliance upon future Defense Department recognition of constitutional rights can be seen by reviewing the current flagrant violations which are particularly itemized above in this state-

ment and which are regular procedure today. And if these practices are not corrected, they will bring us back to court again just as sure as we are sitting here today.

I respectfully submit that it would be unpardonable to permit this to continue. It victimizes the men and the families of the men who, while paying heavily for the privilege of national service, are now threatened with a cavalier, outrageous, and totally unlawful termination of their legal existence. There may be a partial moratorium in status reviews now—but we all know that the moratorium will end. No corrective intent is apparent.

The informational basis on which determinations of death are made, is a matter of particular importance. As indicated above, classified data is not considered regardless of its relevance; and much other information, in U.S. possession or control, is ignored. The files which are reviewed are streamlined superficialities so burdened with relevant omissions that they have no persuasive bearing on the fundamental questions of survival or death and of the prospects of a real accounting.

Apart from the replacement of live, knowledgeable witnesses by summaries of their evidence (often written for them by third parties), there is a whole range of material which should be explored, but never is. At page 54, part 1 of the proceedings of this committee, there is reference to document requests served under the Freedom of Information Act by MIA family members upon the Defense Department. One request in particular was characterized as "asking for anything that had anything to do with prisoners or missing."

I believe I know which document request Dr. Shields was referring to, and I attach a copy as exhibit 2¹ to this statement. I submit that in one way or another, and in varying degrees, each of the areas covered in that document request has bearing upon the likelihood of death or survival of, and of a fair accounting ultimately for the POW's and MIA's of the Vietnam war. However, no effort has ever been made to organize this data, or even any substantial part of it, for consideration by those who adjudicate status reviews. Indeed, the Defense Department response to that document request included the claim that it would take several years and hundreds of thousands of dollars to do so. The State Department, upon whom a similar request was served, admitted that it had 875 cubic feet of such documents.

The unavoidable conclusion is that those invested with what Justice Cardozo described as the "power to ordain," are unequipped to do so because they are deprived of much of the necessary information. Consequently, the results of their deliberations are highly speculative and undependable. The missing men deserve more—much more.

The absence of this material in my mind makes a sham of any pretense of a hearing. You don't have a hearing without having data, and it doesn't do to have patronizing individuals deciding what is good for you or what is not good for you. It is not a hearing. That is an essential problem.

I may add that a similar problem exists in the context of this committee's admirable but formidable task. Despite good will on the part of the committee members, it is difficult to see how, within the confines of time and funds in which the committee operates, a truly exhaustive, in-depth analysis of all the available evidence is possible.

¹ See p. 200.

Consequently, it seems likely that great reliance must be made upon conclusory materials supplied, largely, from Government sources.

Needless to say, we all have high hopes and considerable appreciation for this committee. We look forward with interest to your final report, and in light of the circumstances, we anticipate an absence of negative speculation and guesswork.

Again, may I thank you for this opportunity to present my views on the matter under discussion today.

The CHAIRMAN. Thank you, Colonel Hopper, and thank you, Mr. Foley. The information will be most helpful to the committee.

I only have a couple of questions.

Colonel Hopper and Mr. Foley, did I understand you to say you thought that the next of kin did not have the right, such as a wife, to request a status change?

Mr. FOLEY. I said that and it deserves amplification. Otherwise, it may be an over-simplification. I am not prepared to say that a wife categorically never has a right to request a determination. But such a request creates problems that cannot be ignored.

The CHAIRMAN. I think Colonel Hopper said that.

Mr. FOLEY. What he was saying and what I was saying is that the wife certainly has a right to make some kind of request as it pertains to her own rights, but there is a duty, I think there is a legal duty on the part of the Defense Department, to very, very carefully assure themselves and everybody involved that there is no possibility of a conflict of interest between the interests of that wife, legitimate though they may be, and the other legally recognized personal interests of the subject MIA and I just think—

The CHAIRMAN. This is one of the problems that I have and I think that a lot of Americans have and some of the wives have that they are entitled to a new life.

Mr. FOLEY. There are solutions to that problem.

The CHAIRMAN. Until there is a finding of death, their lives are restricted. It is a terrible problem and I hope I misunderstood.

Mr. HOPPER. What I said here, Mr. Chairman, was that it is the position of the National League of Families that the POW and MIAs' civil rights and his right to life are violated by such action as allowing the next of kin to ask for a status change.

The man himself is not represented at the hearings of these reviews and although his next of kin may be present to represent him, if he or she chooses to do so, often older information which indicated the man was alive and captured was disregarded. In fact, many times the latest up-to-date information on a man when his status change is made is that he was captured alive and was being led away. Many times the NOK is not present at the hearing, therefore the missing man is not represented by anyone.

Mr. GILMAN. What the chairman has stated, of course, troubles most of us. How to reconcile the differences between the wife, the beneficiary, and the MIA. I think you were about to suggest there are some ways that the court utilizes to protect a missing person in a proceeding of this nature. Perhaps you might want to make a recommendation for us.

Mr. FOLEY. I would recommend this: Under the laws of every State in the United States, and I have had them all reviewed for this pur-

pose, because I anticipated this question, every State, with the possible exception at present of Maryland, and California, but there are provisions under State law whereby an individual can have a declaration of death which is binding on State law.

Now, the Missing Persons Act specifically states that it is binding upon the Federal Government and agencies thereof. It does not say it is binding on the States and there is an enormous amount of confusion in the case law as to what the effect will be.

The result is that some States have said that in fact it is not binding on them. Now, the whole business of the validity of a marriage is governed by State law. It is not governed by Federal law anyway and downstream there is going to be a lot of trouble, a lot of trouble in some of these remarriages, because the care was not taken which should be taken to clear up the State law rights at the time.

Now, to be more specific about Congressman Montgomery's question, there is nothing to stop a man from staying in missing status under Federal law while his wife gets a State court ruling clarifying, in a far better way than the Federal ruling does, clarifying her right to remarry and continue her life.

The problem that is created when you get a Federal ruling is this: That—we have some affidavits from individuals who spoke to various North Vietnamese officials and got a consistent story.

We read article VIII(b) as having the North Vietnamese saying that "We are obliged to account for a man who is still missing in action." We can have 25 years or 50 years of continued U.S. Government good will on this issue, but if the North Vietnamese say that by declaring him dead their obligation to account has terminated, it doesn't matter what the Department of Defense wants to do. It is just irrelevant.

I am very glad that Defense is for us. I am glad they are never going to cease seeking an accounting, but the fact of the matter is, I know, and I think they know, and I think everybody knows, that it is just not going to work unless they are given the material and if they create a determination of death that gives the North Vietnamese the golden opportunity to walk out of that obligation, they are doing something wrong and unnecessary.

The CHAIRMAN. Let me mention one thing. Colonel Hopper, while we have our people from the different services, for the record, you mentioned that—and I will agree, there are some hard cases where we know the man was alive on the ground; we have pictures of him and we need an accounting of this American. But there are less than 20 hard cases in all Southeast Asia like this. Am I correct in this, Dr. Shields? Of good, hard cases?

Dr. SHIELDS. I think approximately that number of hard cases where we feel that our facts were correct. Where subsequent evidence has indicated that something else happened to that individual, that is right.

The CHAIRMAN. But he was alive. My point is, we have had figures of 100, 200, 300. As I understand it, there are only 20 good hard cases where we know the American was alive on the ground and was in captivity and then they didn't come out in 1973. Is that correct?

Dr. SHIELDS. I think that is correct, and I would add—

The CHAIRMAN. But it is less than 20?

Dr. SHIELDS. Yes; I will provide you with a specific number on that. I would add that some classifications of prisoner of war were made upon what we know now was erroneous information.

The status has not been changed so all those who are in that category are not the hard cases we are talking about.

The CHAIRMAN. Another question: I will have to defend the military in this. They tried to search for Americans under article VIII(b) and the reason the search was stopped in the latter part of 1973 was that another American was killed in a search procedure. I think this should be pointed out. When we visited the Joint Casualty Resolution Center—they are prepared to resume the search and recovery of remains, and whatever information they can gather, but, because of the North Vietnamese and because of the Vietcong not cooperating, that mission was stopped.

Mr. HOPPER. There is no dispute of that at all. Our point is not an accusation at the military, but when you go back, Mr. Chairman, and you reveal the commitment the U.S. Government made to these men in the Paris agreement, and how it fell through so thoroughly, and so disgustingly, then you can see why the families are so upset.

We were told for months, in fact until recently, that we would have search teams in there. They tried to sell us on that theory. I never did believe it and I have had quite a discussion with Roger Shields on this and I don't think we ever will. I can't visualize a nation letting us, the defeated, send a search team in to look for our people. If this happens, thank God, but I just can't believe it at this point.

Further, we were told we were going to get an accounting within 60 days. Sure, this was a four-power joint military team set up but what happened at the Paris agreement in the agreement itself, considering what the President and the Secretary of State said just a few days before? There is no assurance in there that there is going to be an accounting in 60 days. Assurance that the POW's come home, yes, but when you read the Paris agreement, there is just a small bit in there about the MIA's.

This is what frustrated us so much. We feel and we maintain that the U.S. Government has a moral and legal obligation to account for these men; that they have not made an exerted, positive effort to do so. Hence 3 years now—we are just now trying to open talks with them again. Without your committee, we would not have progressed this far.

The CHAIRMAN. As you recall, Colonel Hopper, myself and others who had been closely connected with the POW/MIA effort over the years, in effect, we are searching for something to get the MIA issue moving again last year. Let's face it. It was dead in the water with the administration and with the public in this country. I don't know how this current investigation is going to come out, but this is something we got moving through setting up the select committee and we did the best we could.

It was a struggle all the way, as Colonel Hopper knows, but we did it out of the water and we did get it off the back burner.

We will just have to wait and see how effective we are. We don't apologize for the committee in any way. We think we have accomplished some beneficial things. We have focused attention on the issue. We have moved the administration and we have pushed them and

shoved them all the way through to get them to start talking about the MIA's with the North Vietnamese, and we have secured exploratory information. Things are moving.

I feel like the committee has taken steps and we feel we will take further steps before the committee expires in September.

Mr. GILMAN. Mr. Foley, am I reading you right that the next-of-kin of the MIA do have a remedy in State courts to take care of their problems if they want to remarry, without the necessity of the Department of Defense making a ruling?

Mr. FOLEY. Absolutely. Every State in the Union has it and it goes back to common law, with the possible exception of Maryland, which is being researched now, and California. It is an ancient thing.

You know, when you stop and think of it, the world has been burdened with missing man problems since Biblical times. This hasn't happened just in this century for the first time in history and naturally there was a large body of law that evolved. It is also necessary, because the whole incidence of marriage is an area that is appropriate for State law to deal with and it is thoroughly inappropriate for Federal law to get involved in it.

Mr. GILMAN. Then, despite the fact, Mr. Foley, that the Department may be carrying a man as MIA, the widow or the wife can still obtain relief and remarry within the State court remedies?

Mr. FOLEY. Yes; and it has been done.

Mr. GILMAN. So there really isn't that pressure for the Federal agency to act in order to alleviate that burden for the family where the widow is concerned?

Mr. FOLEY. None whatever. The only thing that makes it a pressure is the fact there was a failure, I think, on everybody's part to really explain this to the families involved. I feel there was something of a letdown there.

May I also add one thing? I surely hope no one will interpret any comments I make today as critical of this committee.

It occurs to me that, having talked about how the lack of information deprives anyone of the authority to come to some types of conclusions—I just see where some sort of analogous problem may occur some time here, but that is all. I really appreciate what you have done and I think it is one of the best things to happen to us since the Paris agreement.

Mr. HOPPER. Mr. Gilman, there may be another factor involved here, in a wife getting a divorce. A psychological factor. Until someone tells them their husband is dead, they may not want to go into a State court and get a death determination, and we can recognize this, but still the avenue is there.

The CHAIRMAN. A divorce or death determination?

Mr. HOPPER. Whatever it is.

The CHAIRMAN. You said "divorce."

Mr. HOPPER. It is determination of death under the State law.

The CHAIRMAN. The wife has to be considered. She has her feelings and I think we are ducking the issue if we try to go to State courts. I think it is rightfully a matter of concern to the Department of Defense and the Congress, and we have to face it.

Mr. FOLEY. The problem is, we are going to the Defense Department now. Anybody who would be reluctant to go to State court wouldn't

feel badly about going to the Defense Department. The problem is, when they go to the Defense Department, there is nobody there willing to tell them: "You don't need this Federal determination to get what you are looking for. You can obtain it in State court, and go there instead of here."

In that kind of situation there are absolutely no emotional problems I can see on the part of the wife. There may be some in the Department of Defense, but not elsewhere.

Mr. GILMAN. I merely focus attention on that because one of the arguments that has been alleged and one of the reasons that have been urged for more expeditious action with regard to the Department's decisions on changing the status is that the widows want to get remarried.

Mr. Foley points out that that remedy is available in the State court without the Department having to make that sort of a determination. I think it is a factor that will be important to the committee.

Mr. FOLEY. By the way, may I say something else on that?

In *McDonald v. McLucas*, on the issue of the absence of preemptive qualities of the Missing Persons Act, it was the Government that briefed to the McDonald court that the Missing Persons Act is not binding on States. It is rather curious.

Mr. GILMAN. Just one last question.

Gentlemen, do you have any last recommendations that you might have, this possibly being your last appearance before the committee?

Do you have any recommendations of things you would like to see this committee undertake in its remaining time?

Mr. HORNER. I would like to see this committee continue to press the administration into keeping these talks going. My fear, and it is the fear of the League, is that we are going to be caught up here in election year politics, and we are going to be dead in the water, so to speak, if something isn't done to continually, progressively, actively, and aggressively pursue these talks.

The President vetoed the Foreign Aid Act which contained a "Trade with Vietnam" section, and my understanding is the section on trade with Vietnam will not be reintroduced. That takes away one area in which the Vietnamese sincerity could have been tested for 6 months.

Now, if we do not pursue the talks that your committee opened the door to—we are already caught up in charges and countercharges, actions and reactions—this POW/MIA problem is going to be in limbo until after the elections in November, and, with your committee going out of business, where does this leave us?

The second thing is, I would encourage your committee to stay in business until this POW/MIA problem is resolved or, as a minimum, until talks are well underway.

This is very strong encouragement. In a meeting of the western region in Los Alamitos, in response to a question by Mr. McCloskey, the unanimous vote was that this committee should stay in business and not drop this issue in September until there is a final resolution to it. When you go out of business, we are out of business. You have been, in the past year, the only active Government agency that has been able to open the doors on this problem and we need your help on this issue. We've worked hard on it.

Mr. GILMAN. I appreciate your comments.

Mr. FOLEY. My thoughts would focus on the rights of the men. I have a feeling that the opinion of the McDonald court indicated that the court really did rely upon and hope that the Department of Defense would do the right thing thereafter. It was clear in the opinion. It didn't happen. It just didn't happen afterward.

My own feeling is that ultimately something will have to be done legislatively setting out what are these rights, what the guidelines and standards are in reasonable detail.

I have a feeling also that ultimately the duty of making this adjudication may very well be taken away from the Defense Department, which I think in many respects is unduly burdened with it. I don't think it is necessarily the best place to have the job, for them or for us.

I have one other comment to make which doesn't really focus 100 percent on what we did today, but it does in a way too.

In one of your earlier hearings there was testimony about why it is some families are resisting status changes here and obliquely we arrived at the point that, well, some folks think maybe they are doing it for money. I think it was Congressman Guyer said he thought that was a brutal statement to make.

Today there have been some references to finances here which quickly gets to the point that these people have a lot of money around, and Congressman Montgomery, I think, made one of the most important statements about it when he said there are people who are related to the fellows in the Armed Forces who were killed straight out who don't get these benefits.

Now, my feeling is that it is a problem and it is something that you just don't solve by reducing everybody to the lowest common denominator. It could well be that the answer works the other way around. I think, frankly, that the size of the Defense budget and overall economic strength of this country would need to be strained or damaged, if any man who, say, lost his life in service of his country and left dependents after him, that those dependents were at least relieved from any kind of economic hardship. I have made what I might call the "Foley survey" where I have asked folks over the years what are the financial consequences to them of a determination of death. Generally, there are some immediate monetary benefits and then the income drops to roughly one-third. Often, they survive economically because of life insurance which they or the MIA bought and paid for.

I feel while dependency exists, full pay should continue for all dependents regardless of a status review. If anyone is being short-changed that should be corrected by improving their benefits and not by driving others into poverty.

Mr. GILMAN. Mr. Foley, you have certainly been involved in litigation in the findings of KIA and have also been able to study this situation in depth. I would welcome your submitting to the committee your recommendations for improving the administrative procedure and perhaps our committee could take some time, Mr. Chairman, in reviewing some of those recommendations to see if there is some possibility for strengthening that review procedure without the necessity for legislative action.

Mr. FOLEY. Or litigation, I may add, which would be a welcome day for me because I am not looking forward to these lawsuits.

Mr. GILMAN. Could you submit to our committee a formal submission of recommendations, and I would like, Mr. Chairman, if we could insert those in the record at this point.

The CHAIRMAN. Let us look at the recommendations and then I will present them to the committee. It is a matter of volume and not content. There is just a certain amount of printing we can do with the funds we have.

Mr. GILMAN. I have no objection to that.

Mr. FOLEY. I would assume what you have in mind is something like a general outline, not drafting statutes.¹

Mr. GILMAN. If you would just give us some specific recommendations.

The CHAIRMAN. I would like to see what it is.

Mr. McCloskey. Mr. Foley, in your statement you attack the specific provisions of these two laws.

Mr. FOLEY. Oh, yes. I expect to be back in court on those. I think they are unconstitutional right now.

Mr. McCloskey. Did you make that point to the Supreme Court when they denied certiorari?

Mr. FOLEY. It wasn't certiorari; it was a direct appeal from the three-judge court and they affirmed. What happened there was the Government made a motion to affirm, largely on the basis that the case had become moot because new regulations had been passed and that we really should be in court now litigating on the basis of the new regulations.

On the basis of that, the Supreme Court affirmed sharing a four-word decision between two cases. There was no expression of opinion whatsoever. It just said "affirmed," that is all.

Mr. McCloskey. You don't think they reach the constitutionality question?

Mr. FOLEY. The Supreme Court did not. The three-judge court really did reach the notice and hearing issue. It is a beautiful opinion. The decree is awful, but the opinion is great.

The thing that really amazes me is that anybody can take a look at an opinion of a court which states when there is an adjudication of fact, there is a right to notice and hearing and turn around and say, "Yes, but it doesn't apply to the MIA."

Mr. McCloskey. As I understand the procedures they have designed under these regulations, there will be the opportunity for hearing.

Mr. FOLEY. But for whom? Only to a next of kin who is receiving Government benefits, who has a right to appear, to protect property interests. Nobody represents the MIA.

Mr. McCloskey. A guardian should be appointed for the MIA?

Mr. FOLEY. Absolutely, or a "next friend."

Mr. McCloskey. Why would the guardian's interest be greater than that of the next of kin? As I understood the testimony, they will go to the primary next of kin, as well as—

Mr. FOLEY. That is what I hear, yes.

Mr. McCloskey. What then is your objection? If you go to primary next of kin, plus the next of kin receiving benefits, why should there be a guardian appointed for the deceased?

Mr. FOLEY. I would say before you get as far as a guardian, a guardian could be a primary next-of-kin and one receiving benefits. I don't think there is a necessary conflict between them but what I am saying is there is no inquiry made today as to whether or not there is a conflict. That comes first—before you can tell who is qualified to act.

Mr. McCloskey. What I am concerned with is the potential constitutional objections to the procedure that the Defense Department says they are going to follow. What are your objections to those procedures?

Mr. FOLEY. I think I have 15 or 16 of them listed in my earlier testimony.

Mr. McCloskey. Let me take them up one by one.

No provision for notice to the MIA or to a representative of his without conflicting interest.

What would be the conflicting interest?

Mr. FOLEY. Let's assume, for instance, a wife who is a next of kin receiving Government benefits wishes to remarry or wishes to collect \$200-and-some-odd-thousand. We have those situations. We have also a presumption derived from common law and universally observed in this country that until there is ground for a determination of death and until it occurs, there is a presumption that the missing person has a continued interest in living. So you have a conflict right there.

Mr. McCloskey. Wait a minute. What is the conflict? The wife wants the death ruling and others do not.

Mr. FOLEY. If the parents are prepared to come in and represent their son, that is fine. I don't think there is anything additional in terms of parties.

Mr. McCloskey. If the Defense Department pursues this proceeding, notifying both wife and parent, you have no objection?

Mr. FOLEY. Providing the parents are willing to accept the burden. That might be a problem. What happens if the parent says, "Look, don't bother me" or a parent is unable to do so?

Mr. McCloskey. In that case you feel the guardian should be appointed?

Mr. FOLEY. Yes, and that guardian may well be some other relative.

Mr. McCloskey. You then say there are no standards or guidelines which instructs the Government or the service secretary under what circumstances they will be reviewed.

We say in the law he may do so at any time after the first year's determination.

Mr. FOLEY. In *McDonald v. McLucas*, the Government stipulated that. They know and I know they have no standards in the guidelines. It is a constitutional requirement. These people are told to do something and are not told how. This is a delegation of legislative authority and the Supreme Court has spoken many times on it. It is not permissible.

Mr. McCloskey. How would we have been able to predict in a law though that you might have negotiations as the Paris peace accords—how could we write in a criteria?

¹ See Exhibit 4, p. 200.

Mr. FOLEY. You could have criteria such as, all known sources of information must be explored and examined first and when it can be shown that that has been completed, then you do this. Also procedural guidelines protecting due process rights could easily have been legislated as they have been in other instances, such as the Administrative Procedure Act.

The CHAIRMAN. We have 8 minutes left and then the committee will be adjourned.

Mr. McCLOSKEY. What is your personal opinion on this situation which we faced with Laos and Vietnam, for example, where Laos, the Government is new; we have had no real negotiations or communications with them. Would that not be a different situation than Vietnam where we have an unequivocal statement on their part that there has been release of some POW's and there are no others?

Mr. FOLEY. One is a newer entity than the other. Presumably, as time goes by and communications develop, that gap will narrow. I will also say though I see no great importance that can be drawn from the fact that the North Vietnamese or South Vietnamese say that they have no information when the persons to whom they say it know for a fact that they do.

The only conclusion that can come from that is that you know and they know that they lied to you. Starting off from that standpoint, problems begin, not end.

Mr. McCLOSKEY. We wrote this law for a purpose and it is the law and the Defense Department must consider the law as to whether they have an obligation to conduct these hearings. It would just seem to me reasonable per se that 3 years after negotiations are completed, that the Secretary would have an obligation in 1976 to make a determination in each case. Merely by the passage of time.

Mr. FOLEY. I don't think the passage of time is enough of a consideration under circumstances such as this when you have one other thing and that is when you say that passage of time has been accompanied by the coincidence that there is a continuing knowledge that information is there and there are continuing efforts to get it.

Mr. McCLOSKEY. Wait just a minute. Are you saying information is there in the hands of other sovereign governments?

Mr. FOLEY. Yes.

Mr. McCLOSKEY. You feel there is an obligation to continue people as missing until we satisfactorily reach a conclusion that the other government has taken action?

Mr. FOLEY. No; I am not saying that. What I am saying is this: We have an ongoing search and accounting effort in this country which is presumably premised on the assumption that we are going to get some answers. In short, you look at and consider all of the evidence first, and later you make conclusions.

Mr. McCLOSKEY. Just a minute, Mr. Foley. We have an unequivocal statement from the Premier of Vietnam, from the Chief of Staff of the Laotian Government, that they are holding no living Americans in those countries.

Now, isn't that a circumstance which the Defense Department should take into consideration?

Mr. FOLEY. I believe it is one circumstance among many.

Mr. McCLOSKEY. But those are new circumstances. Those circumstances have only occurred in December of last year.

Mr. McCLOSKEY. They should be evaluated. Let's put it that way. I don't think it is enough of a circumstance for conclusions to be drawn on it in its bald state. It has to be evaluated.

Mr. McCLOSKEY. Let me make sure I understand your objection. Nothing the Defense Department does in your judgment will cure the fact that you basically believe the law itself to be unconstitutional.

Mr. FOLEY. A number of the constitutional defects might be administratively curable. I think we go too far if because I say it is unconstitutional, that it has to go, lock, stock, and barrel. There may be a way to work it out.

We have tried to get the message across that we would love to help do that.

Mr. McCLOSKEY. The files I have reviewed personally satisfy me that a presumption of death finding would be made. The Defense Department would be delinquent if they didn't do it. Because of the facts that have been testified to before this committee. The young man captured in Laos and testified to the difficulties of staying alive in Laos, the young man who tried to escape three times and what happened to him each time he tried to escape. In fact, these men were trained to survive in this wilderness. The fact that the time has elapsed and—

Mr. FOLEY. If they have reasonable proof in cases like that, I will not say I will ignore the facts, but I am willing to say this, in this country you put your facts on the table.

The CHAIRMAN. I would like to thank Mr. McCloskey and Mr. Gilman for staying through most of the hearings and thank our witnesses for being here.

[Whereupon, at 12:25 p.m., the committee was adjourned.]

HOUSE SELECT COMMITTEE ON MISSING PERSONS IN SOUTHEAST ASIA

WEDNESDAY, MAY 26, 1976

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON MISSING
PERSONS IN SOUTHEAST ASIA,
Washington, D.C.

The select committee met, pursuant to notice, at 9 a.m. in room 2217, Rayburn House Office Building, Hon. G. V. Montgomery (chairman of the committee) presiding.

Present: Representatives Montgomery, Lloyd, and Gilman.

Also present: J. Angus MacDonald, staff director; Jeanne Shirkey, administrative assistant; and Dr. Henry J. Kenny, Dr. Job Dittberner, and Mr. John Burke, professional staff assistants.

The CHAIRMAN. The committee will come to order.
Other members will be coming in.

Before the hearings begin today, I want to mention the reception held yesterday in honor of Mr. Roger Gallopin. During my trip to Geneva in April, I had the occasion to meet with Mr. Gallopin and other officials of the International Red Cross. Mr. Gallopin, the president of the Executive Committee of the International Red Cross, has been working with the Red Cross for decades and will be retiring this year. Many of our fellow Congressmen appeared at the reception, and I am pleased that this committee was so well represented.

You are all well aware of how the International Red Cross has helped our committee efforts. Many of the American citizens in Saigon owe their food and lodging to the ICRC. These are the American civilians who did not get out of the Saigon area when that country fell to the Communists in March 1975.

We have been working with the ICRC on behalf of a Mr. Judson, who is an American civilian who is going blind. He was recently able to leave the Saigon area and come back to the United States.

We have two witnesses today—Mr. Raymond Schrump and Mrs. Karen Martin.

Our first witness is Mr. Schrump, a returned Army lieutenant colonel now living in Fayetteville, N.C. To date, we have heard from witnesses who testified to their captivity in Laos, Cambodia, and North Vietnam. We have never heard from anyone who was captured by the Vietcong and held in South Vietnam.

Colonel Schrump's testimony is of special interest to the committee for these reasons: he was captured by the Vietcong guerrillas in South Vietnam in May 1968, and held captive in South Vietnam and Cambodia for over 5 years. He was the senior prisoner-of-war held in areas in the South.

Colonel Schrump, thank you for appearing before the select committee. And you may come to the witness stand and testify before this committee.

I might say that the colonel is accompanied by his charming wife. We appreciate her attendance also.

You have a prepared statement, I believe?

STATEMENT OF RAYMOND C. SCHRUMP, LIEUTENANT COLONEL (RET.), PRESIDENT, A.R. & S. ENTERPRISES, INC., FAYETTEVILLE, N.C.

Mr. SCHRUMP. Yes, Mr. Chairman. I would like to refrain from reading it. I would like to go over it very briefly in my own words, and submit the statement at the end.

The CHAIRMAN. Without objection, Colonel, we will put the full statement in the record.¹

Mr. SCHRUMP. Mr. Chairman, I would like to start by saying thank you for the honor that you have bestowed upon my wife and myself of coming here and giving us an opportunity to speak before this committee. And I want to thank you for everything that you have done for our missing in action and our POW's.

Since my return, I have been working as hard as I could, trying to start a business, and all. But I have been speaking throughout the State of North Carolina, throughout the State of Wisconsin, and every area that I can, trying to make the public aware that we still have men missing in action, and the importance of having them accounted for.

With that, I will get into my captivity.

In January of 1968, I was assigned to MACV Team 90 in Hieu Thien District, Tay Ninh Province, as senior district adviser. On May 23, 1968, during a combat operation in my district, I was captured by the Vietcong. During the firefight that took place prior to my capture, I was wounded in the right arm, and had a broken right arm. And upon being taken captive, I was taken only a short distance from my place of capture, and held overnight, and the next day. I was amazed at the network of tunnels and bunkers that they had built in areas that I had previously been through in combat operations. And I knew there would be some search operations for my recovery, because I knew they saw me being taken away. And yet, they were unable to find us because of excellent camouflage, and being able to cover their positions.

The night of the second day, I was taken across the Van Co Dong River, and into Cambodia. This took us about 15 days for the move. During that period, I received very little medical attention, some vitamin shots, but no antibiotics.

We rested in some of the villages. I was amazed at the attitude of the people in these villages. Their villages had been bombed out, and they were living in makeshift shelters. However, everywhere I went there was a hard core Communist or part of their infrastructure at my side along with guards. But the people treated me very well. And

I feel, as I look back in retrospect, that it was all part of their indoctrination. I had had a radio operator with me, with my special forces team, who had been captured and held for 15 days. He was paraded through villages and stoned and beaten by the villagers.

It was quite evident that the guerrillas were not ready for an input of prisoners of war. There were no facilities for us whatsoever. At the end of the 15 days, we were back into South Vietnam, but we had traveled into Cambodia and stayed there to rest a few days. I was brought back into areas that I recognized from previous combat operations that I had been on.

The restraints that they used initially had been made sometime before my capture, and had been used, because there were particles of hair and flesh on those hobbles.

The first camp that I arrived at and what I thought was a prisoner of war camp was horrifying to me. My first thought was how long can a man survive under these conditions. There was another prisoner of war there. He was South Vietnamese, or Cambodian. His face looked like a piece of raw hamburger from beatings. Every time he opened his mouth he was struck in the face, either with a rifle butt or a fist.

I was placed upon the ground in a shallow pit approximately 6 inches below the ground. Across the center of this pit there were hobbles made of two 2 by 6's, one placed on top of the other, and they had holes in them for your ankles. I was left there for approximately 7 days. I was fed approximately three teaspoons of nuk-mam with about four ounces of rice two times a day. I was not allowed any toilet privileges, and because of my broken arm, it was very difficult to roll over to my right side. And I thought this was the type of conditions that I was going to have to live under for some time.

It had a real effect on me psychologically, I guess the fear of the unknown, and of course all during captivity the fear of the unknown was the hardest thing to cope with.

From here, I went to another camp, and finally received some antibiotics, and some medical treatment, very rudimentary at best. For example, when they set my arm, he placed his foot into my armpit, pulled on the arm, twisted it—couldn't touch the bone because of the swelling. And then they cleaned the wound, they would take clamps and grasp a piece of cotton, dunk it into iodine, and then swab out the wound. The dead flesh was cut away with rusty razor blades.

The structures that I lived in during that period of time that I was with the Vietcong guerrillas were in their fighting bunkers, and in their headquarters type bunkers. They were underground. They were about 4 feet wide, 8 feet long, about 5½ feet deep. I was at this time given no hammock or mosquito net or anything else, and it was during this time I was interrogated. It never was their intent, I don't believe, to extract military information from me, but to change my position to an antiwar position, and to extract as much biographical data from me that they possibly could.

The guerrillas were not trained in handling of POW's, it was quite evident, nor were their structures and restraints that they used anything that I was to experience in the future.

I stayed with the guerrillas until, I believe it was September of 1968, when we were turned over to North Vietnamese regulars. They came in with an organization of a commander, a political officer, and

¹ See p. 270.

around six or seven guards. At this time there were other prisoners brought in at that time, but I was kept in isolation for approximately 2 years. I believe this was because of my rank, and my determination not to give them what they wanted.

During that initial phase, and during the interrogation and indoctrination, I was tried as a war criminal; 13 officers convened, a colonel and 12 other officers. I was told that I would be executed at the completion of the trial, but I could save my life if I would make an anti-war statement, or make a statement derogatory to the United States.

Refusing to do so, I was given copies of several statements that had been made by other prisoners of war, and told to think about it, and was sent back to my bunker.

I was returned again, and when I was returned and appeared before the board again, they asked me if I would make a statement. Refusing to do so, the colonel rose and said, "Give my regards to your wife and family at the end of the war," and walked off. I don't know what their intent was—possibly just a part of their interrogation or indoctrination. But that was the end of the trial.

From here, we joined up with other prisoners. We were all kept separate from each other. It was very difficult for us to communicate in any way. However, we were able to work out a system. As I mentioned in my statement, I wanted to try to use a dead drop initially. This is a means by which you place a message in a given location, and everybody knows where it is, and it can be serviced. When I went by the individual on my way to bathe, I said, "Let's set up a dead drop." He responded by saying, "Don't tell me to drop dead." It was quite apparent that the men in the camp were not aware or had not been trained in covert communications systems. However, I was.

So we tried to work out some system by which to get the names together and to get the information from the people. We started first with hand and arm signals. And we worked out a pretty good code. However, it wasn't sufficient to get the information that we felt we needed. So we started singing songs and putting our own words to them. In that way we were able to gather the names, home State, family background, military background, from all the men, and in a very short period of time we know everybody that was in the camp by name, home State, family members, and some of their military background.

After we once started this system, if we wanted to talk to an individual, we would whistle his home State song, he would respond by whistling our home State song. They were never able to really catch on to this. It was only the noise factor they were concerned about, and stopped us periodically. Later in captivity, then they allowed one man for each meal to be removed from his chain, and apportion the food and return the food to the men. Then we had a free flow of information and no problem whatsoever.

We were in a very fluid situation for the entire period of captivity because of air strikes, ground operations, and escapes. We were just constantly on the move, almost. The longest we stayed in any one camp was 11 months.

All of our moves were forced moves. It was impossible for them to have camps set up in which to bring us to. So each time we arrived at a new location, we were bivouacked outside of the camp proper until

they had the camp built. And then we were moved into the camp. The type structures they used varied from holes in the ground that I described before to structures above ground that we called monkey cages. They were built of logs about 4 inches in diameter, about 4 inches apart, and they had logs on top, the side, and they would go down into the ground to prevent escape approximately 5 to 6 feet into the ground, placed logs on top of each other to prevent you from digging out.

Inside the structures they had a small bunker built for an individual to protect him from the air strikes.

The atmosphere that we lived in was the most controlled atmosphere I have ever seen in my life, or ever had to live under. We had to ask permission to do everything. And when we did, in Vietnamese, we would have to recite the liberation fighter, "May I," and then ask what you wanted to do. You were ridiculed for everything you did. You did nothing right. This asking permission, total isolation—this part of captivity I was not prepared for. The training that I had received for the physical aspects of captivity I was totally and completely prepared for, and more so than any other man that came into captivity. I was able to adjust to the food and to the treatment quite fast. However, there were times during the isolation where I asked for physical abuse. I would strike a guard, I would do something just—I don't know why. But it was the mental anguish that was almost unbearable. So we had to work out something to exercise our minds. We drew floor plans of the home we wanted to build when we returned. We would write figures on the ground, how much it would cost to capitalize a company and get a business going. And we were not allowed to work. We just sat for 24 hours a day.

The daily routine was up about daylight. We all exercised in the morning. You were fed. Then you sat until the next meal. And then for 2 hours in the afternoon you were locked in the bunker or the structure again, and then let out again in the afternoon, and locked up again in the evening after the evening meal.

The food that we received was enough to sustain life, but not enough to maintain good physical condition. It consisted mostly of vegetables, about 4 ounces to a serving, mostly called ramong, it is like our spinach. Rice was served in about 4-ounce portions. And we received meat on an average of about once a month, and when it came it was about four pieces about the size of the end of your thumb.

We ate everything that lived in the jungle from time to time. And after adjusting to it, it wasn't too bad. Fish we received quite often, but mostly intestines, tails, fins, and heads.

As I mentioned, the medical treatment was rudimentary at best. I had about 150 attacks of malaria. The only thing that I received during the entire time was quinine, usually in 3-day treatments.

There were some vitamin shots. We suffered from malnutrition, beri-beri, respiratory infections, stomach infections, diarrhea, dysentery, skin rashes over the body.

Their punishment for breaking of camp regulations, which were never written, they made up their regulations as they went along, varied from beatings to being strung up, tying the ankles and wrists together, and strung from a bunker, from the top of a bunker, so that you can support no weight on the ground, to standing in the sunlight

chained to a tree, so that your weight could not be equally distributed on both feet, and left there until you apologized or condoned what they were doing.

At one time I was locked in a bunker for 30 days, in that 4 by 8 by 5 foot bunker, and this was my low point in captivity. And everyone in captivity reaches a low point. It usually comes between 6 months to a year. I lost sight of reality for that period. I went into a period of deep depression, worried about my home, the war, when it would come to an end, my family, and because of this was not able to eat properly. I was only fed sometimes once, at the most twice a day. I was not allowed toilet privileges, nor was I allowed outside to exercise in any way.

When they took me from the bunker, I had beri-beri from the bottom of my feet to the top of my head. I could make an indentation in any part of my body as deep as an inch, and it would take sometimes 30 seconds to 1 minute for it to recover. I had a respiratory infection, diarrhea, and you can imagine the filth in the bunker.

I had placed myself now in a position where they could barter with me. And it was very shortly after this that they were able to obtain a statement from me that was derogatory to the United States, stating that we were wrong in our involvement in Vietnam, and that we were receiving lenient and humane treatment.

I was taken back, before making the statement, three or four times. I could not walk any more than 10 or 15 feet without collapsing or without assistance from someone. When I was taken back the last time I posed a question to myself, as I was being taken back, "Do I want to be a picture on a wall with a medal hanging over it, or do I want to come back and tell the American people what I experienced?" I chose to return, and I made the statement.

I feel I could have gone the route had I been with other prisoners at the time, and had the responsibility as the senior officer or as the camp commander. However, I did not have the opportunity to experience that, so I cannot say. But I reached a breaking point. I became an individual, and no longer a part of a team. I think this is important.

After making the statement, then the worst part came. I had to overcome a guilt feeling. I felt I had broken the Uniform Code of Military Justice, my oath as an officer, and the Code of Conduct. I physically assaulted the walls of my bunker. I cried. I just couldn't go on. But then something happened that was my turning point in captivity, and I received a form letter from my wife. I cannot remember what the seven lines of that letter said, but I remember the capitalized words at the bottom of it, and it said, "I love you." I was able to muster my courage again, and go on. Today Ann wears a bracelet with the inscription on it, "For the Want of Your Love I Could Endure." From this point the prisoners were brought together then, and then I was able to take command. This was very difficult for me, after what I had done. I didn't know if I should tell the men or I should try to hide it from them. I chose to tell them. And lo and behold, every man in the camp had gone through the same thing and we were satisfied. I appointed a second and third in command. Then I took a long period of time to try to determine who were the strong and who were the weak,

who I could depend on, who I could not. I tried to develop as much information as I could on the background of the individual as to determine why he did things. And while I was gathering this information, and talking with the men and everything, I wondered if a sophisticated command system would be the thing to have in that it could be compromised, and could be broken up. Possibly someone could be punished or executed for it. I also questioned if someone might not resent authority and go to the captor, and collaborate with him. And there, again, we would have a problem I don't think we could have coped with as well as we could with the system I used. I like to call it the fatherly approach.

I asked for input from all the prisoners before we did everything whenever possible. I only had to use my authority on several occasions. One, I had to beat a man to get him to eat. Another, I had to drag along the ground by the hair of his head until he got on his feet and walked. Both of those men are home today.

Another time a man refused an order of mine. I did not have the Uniform Code of Military Justice or any backing to use my authority, so I had to have a falling out with him, in which we exchanged blows, and a very uncomfortable situation because of it. But we were able to get back together.

I attribute our homecoming to our three basic faiths; that was our faith in God, that brought us through all of it, and our faith in our country. Having your freedoms taken away that you once took for granted for so long gave you determination to go on. And then our faith in our fellow man, which brought us through the survival situation. We were totally dependent on each other, and had to be. We knew this. And this is how we were able to get together, and remain together.

I would like to cite an incident that happened. I was asked to make punji stakes, and refusing to do so, they took my food and water away. Without order, when the next meal was served, every man in the camp refused to eat and went on a hunger strike until such time as I ordered them back to eat. They were in no condition to go on for any period of time. I went on alone until I went into a state of unconsciousness.

In the spring of 1970, because of the Cambodian invasion, we were forced deep into Cambodia. Before going into this, I would like to mention where we were held. We were held in Tay Ninh Province in the northern part, along the Van Co Dong River. We moved up and down along the river from camp to camp. We never returned to the same camp. However, they did use them occasionally as mission support sites, just to bring us in temporarily as an overnight stay, and then move on. They always went to a new location, and built a new camp. And I know sometimes we were only a few thousand meters from a previous camp.

This went on until the invasion in Cambodia. Then we were forced deep into camp. I spoke Cambodian, had a year of Cambodian before I was captured. When they had us in the village, we readily recognized we were in Cambodia, by the houses being built on stilts. And then I was able to understand what the people were saying.

This move was the hardest move that we had. Food was scarce. The logistical lines had been broken. We were under small-arms fire, artillery, air strikes. And then the harassment of the guards. And it took us

almost 3 months to find a relatively safe area. We stayed periods of 2 to 3 weeks at different locations in Cambodia. And then when we did find a relatively safe area, we were there for 11 months.

In Cambodia, we were not harassed the way that we were in South Vietnam with ground operations after the invasion was over. We didn't know what was going on. We knew there was a large operation taking place, but we had no idea what was happening.

Our final move came in the early spring of 1972. This move was the most coordinated move that we had had. They had preselected mission support sites with men operating them, they had food prepared when we arrived. The food was adequate. They used trucks. We were trucked north of Kratie into Cambodia. On the 10th day we were detrucked at a customs and immigration house on the Laotian border, and then we moved south back toward Kratie.

We felt, during this move, that they were moving us to North Vietnam. It was a good feeling, because we thought maybe the war was coming to an end. However, we were not physically fit to make the move. Apparently trucks were not available after the 7th or 8th day. So we had to move by foot. Most of us could no longer walk. I myself was walking with two sticks, could not support my weight on my knees. And the slightest depression in the ground and I would collapse.

Here, as I mentioned, we stayed approximately 11 months. And probably it was one of the worst years that we had. I believe because of the bombings of the North and what have you, the treatment was much more severe than it had been in previous years with the exception of 1968 and 1969.

In recapping, as I mentioned during the first 2 years of captivity, I was kept in isolation from the other prisoners, and because of our faith in one another, and our ability to get along, only three men died. One man was shot in an attempted escape. He had a severe mental condition prior to his attempted escape. He was talking as if he were God, and at one time we were under small-arms fire during the invasion, he jumped up in the middle of the fire fight and started screaming and hollering, "My mother and father are here, I want to see them now." He had to be muffled for the protection of the other prisoners and men in the area.

The second man we are not really sure how he died. This young man went into a bunker and they did bring medical aid to him. They brought fruit and medicine. They went into the bunker. The young man would not respond, or they were bartering for a statement, and he would not make it. We never saw him die. But we saw him—they did take him away. First they took the other prisoners away that could observe the bunker and then the man was taken out of the bunker and taken away.

The third man was the most horrible death that I have ever witnessed in my life. This young captain, it took him almost 3 months to die. He started with malaria. He had malaria for about 12 days and he received very little quinine, maybe 3 tablets in the 12 days. He had dysentery, and he became very depressed. We could not get to him and help him muster determination to go on. And he had a very serious intestinal disease. I bathed him—I was the last man to be with him before he was taken and laid on display in the center of

the compound. When I bathed him, I could not rub a wash cloth over his stomach, without him screaming with pain. And in the center of his stomach was a large knot about the size of a brick, which could not be touched without him screaming with pain.

That evening, after I bathed and massaged him, he was taken into the middle of the camp and laid on a bamboo rack, with a piece of plastic over him. They dug a hole next to the bamboo rack, so that he could use it as a toilet. He no longer could walk. He was left there to die. On the morning that he died, fortunately we had three men off the chain to collect our plates and apportion the food and give it to him. But the night before, the interpreter came down and stopped by, and he asked the interpreter, he said, "My God, please don't let me die. I know that the war is coming to an end, and I want to go home. Please don't let me die." The interpreter as always smirked and walked away. During that 3-month period he was denied all medical treatment. Many of us were beaten severely and punished attempting to bring pressure upon the camp commander to bring him medicine. And when it was determined that he could hold down a broth or some type of food, we never saw it again until after his death.

In the morning, he rose slightly on his elbow, jerked violently several times, fell onto his back, and died. The two men that were off the chain worked over him for over 2 hours, with heart massage and mouth-to-mouth resuscitation, trying to revive him, but were unsuccessful. And it was the only man we ever had an opportunity to have any type of religious service for. We could not openly practice our religious beliefs by making or wearing religious medallions, or symbols of any type. This is one opportunity that we had. We took advantage of it.

During the move into Cambodia, we received new prisoners that were captured during the Cambodian invasion. One of these prisoners was Mike Varnado. Mike was captured with Dan Mazlowski and Fred Crowzen and Capt. Robert Young.

Captain Young, Mr. Mazlowski, and Fred Crowzen were taken immediately into our camp. However, Mike they thought was taken somewhere else for medical treatment. We did not see him until about 30 to 45 days later. And it was during the move into Cambodia. We were resting in a banana plantation. And it was during this rest period that Mike was brought in. He was in a hammock, suspended from a bamboo log. I asked permission to speak with him. The camp commander gave me permission. And while I was talking with him I also inspected his wound. It was several weeks old. And his right leg, I believe it was his right leg, and I am not sure of that, was broken, and the wound was severely infected. I don't know how to recognize gangrene, but I don't believe he had gangrene. But I know he had a serious infection.

He said he had received some antibiotics. He was in dire need of more antibiotics, but he was in fairly good spirits. He was somewhat depressed due to his concern for his wife. He indicated that he had to be returned during his tour of duty in Vietnam, during the birth of their baby, because of his wife's mental condition and he was sure now that she would probably break under the pressures when she learned of his capture.

I attempted to reassure him that everything would work out all right, and more than likely he would receive some medical attention, because they knew the importance of having us as prisoners of war to bargain with at the negotiating table. Then the camp commander instructed me to leave. But before I left, the camp commander stated that Mike was going to be taken to a hospital the next day. Mike spent the night with us, and the next morning we continued on our move, and Mike was taken away, and no one saw him again.

In my opinion, Mike is a very strong-willed individual and if he had received medical treatment for his wounds in a week or so, I believe he could have pulled through.

However, I would like to mention I did not believe the camp commander at the time. In fact, I would never believe anything that a Communist ever told me, under any circumstances.

And that generally covers my statement.

I would like to state that I personally believe that they are still holding men in Indochina. I have no fact to base this on. It is just a gut feeling that I have. I don't think that North Vietnam or South Vietnam are holding prisoners in either one of those countries. I think if there is anyone alive, they are in Cambodia or Laos. And this way, the North Vietnamese can deny holding any prisoners. And I do not think we will ever know about Cambodia for years to come.

However, if they had any, I believe that they would have moved them into Laos or Cambodia, for the simple reason to keep from losing face, or whatever you want to call it—they now can deny holding anyone, and can blame it onto Cambodia or Laos. And because of the situation in Cambodia, I know it is going to be impossible for us to get any information out of there for some time to come. They are capable of doing this, and I feel they want reconstruction aid, they want offshore oil drilling assistance, and they want diplomatic relations and recognition by the United Nations. And until we start to negotiate with them, we will never be able to know what the situation really is or how many they have.

I am sure that they¹ know the whereabouts of all these bodies. They are people that are so meticulous, and so detailed in their writing. I have captured operation plans for small units that were as thick as 2 inches, and detailed right down to the last man. On the day that the young man was shot on an attempted escape, they started writing right there at the site he was shot. I am sure they know where these grave sites are by grid coordinates, and can go back in and recover these bodies anytime they want to.

I am sure that a complete accounting cannot be done. I am sure that there are some that we will never know what happened to. But I think the vast majority can be accounted for.

I personally believe that the United States of America once again is going to have to take a very strong position on this.

We ask our wives to bear our children. We ask our children, as parents, to accept their responsibilities as American citizens, and fulfill their obligations to the United States of America. Now I feel the United States of America has an obligation to these men. They left this country in good faith, in a commitment to our allies. They

¹ Lt. Col. Raymond Schrumpp later qualified this statement; he referred to the North and South Vietnamese, not to the Lao or Cambodians.

were not merely signators on a bill or treaty. They made personal sacrifices of life and freedom. And for that reason I think a full accounting must be done. We must return integrity and moral commitment to our Government, to the American people. We cannot expect the mothers and fathers of this country to raise their children with patriotism if the Government is not going to respond. I say we must stand up and tell North Vietnam if they want anything from this country, they must turn over information and the bodies of these men.

I don't think we can barter with them at a negotiating table.

I think the American public has a right to be a part of this decision. I feel the executive branch has got to go on national television, and tell the American people of the MIA situation. And I am sure that our Chief Executive will have no problem in making his decision of what to do if he outlines a program and brings it to the people, or he will be flooded with telegrams and letters.

I spoke throughout the State of North Carolina on the MIA issue, throughout the State of Wisconsin, and everywhere that I can speak. And I find the same response everywhere I go. It is very difficult for us being in business to maintain this public awareness, and keep the support coming to Congress, and to the President. We are doing the best we can.

I feel that if the President does this, he can do the same as when he granted amnesty. It only took the President of this country a few weeks to make up his mind what to do on amnesty, and he paid recognition, as far as I am concerned, to those who ran away before those who made personal sacrifice of life and freedom, and for that I will never forgive him.

With that, sir, I would like to answer questions.

The CHAIRMAN. Is there any objection to taking pictures or recordings? The Chair doesn't have any objection.

Mr. GILMAN. No objection.

The CHAIRMAN. OK.

Thank you, Colonel, for that most moving statement. For our two Members who have come to the hearing—Colonel Schrumpp is a former prisoner of war, American Army colonel, ranger, who was captured in South Vietnam, and was moved back and forth between South Vietnam and Cambodia. We have had testimony from other prisoners of war in North Vietnam and also in other parts of the world over there. We felt that it would be good to get someone who actually was in South Vietnam.

We appreciate what you said this morning. I would like to say under the circumstances that you were involved in, that I don't know really of any American that could have survived without making some type of a statement. I think you should not worry about that.

Mr. SCHRUMPP. I do not, sir, any longer.

The CHAIRMAN. Good. It is nothing to worry about. If you want to look for a problem, look for something else. But under the circumstances, in that particular situation in time, you did what you had to do, and you shouldn't have any concern about any type of so-called confession.

Mr. SCHRUMPP. If I may, Mr. Chairman, I left out one thing I think is important. We were separated several times—like the civilians were

taken out of our camp and joined with other civilians. Enlisted men from that civilian camp were brought in with the officers from the Army. And this changed several times during captivity. We were all brought together in Cambodia, prior to our release, and we built a camp that was the finest camp I have ever seen in my life. And this was the last 3 months of captivity. We built bunkers that were made of logs 6 inches in diameter, and was really a permanent camp. The kitchen facilities were the best I had seen anywhere in Vietnam, including some of the villages. And there were eight bunkers built to accommodate three men to a bunker. We built these just prior to leaving.

Upon our departure from that camp, we saw an estimated battalion of North Vietnamese, moving into the area. We didn't feel that they would use it, because of the facilities that we had built as security and what have you.

The CHAIRMAN. I hate to interrupt you. In fairness to the other witness, we are going to have to move right along, and we do have some questions. Your oral statement took longer than we had anticipated. But I think it was a strong, strong statement. And it should have gone on the record.

The guerrillas you speak of that captured you, those were what we call Vietcong?

Mr. SCHRUMP. Yes; they were local guerrillas. One of the men was a 16-year-old that had been in our compound, and I had taught to play basketball and softball.

The CHAIRMAN. In the compound you had known—

Mr. SCHRUMP. He was a Vietcong.

The CHAIRMAN. That doesn't speak very good of our security system over there.

Mr. SCHRUMP. No, sir, it does not. But how do you recognize him?

The CHAIRMAN. You mainly spent most of your time in South Vietnam as a prisoner, or in Cambodia?

Mr. SCHRUMP. In South Vietnam.

The CHAIRMAN. You were only a short time in Cambodia.

Mr. SCHRUMP. Two years. In 1970 we were taken into Cambodia.

The CHAIRMAN. You were 2 years in Cambodia, and the rest of the time—

Mr. SCHRUMP. Three years in Vietnam.

The CHAIRMAN. From your data bank, memory system, were any of the Americans not released that you knew were alive?

Mr. SCHRUMP. Only two, and I only saw them for a short period of time. I was taken to a medical center of some type, and upon coming into the camp, I saw two Americans severely wounded. They were bandaged in the head, the arms, the legs. And I rose up into the hammock I was in being transported into the medical facility, and I said, "What is your name?" I was struck in the head with a rifle butt and fell back into the hammock. I never saw them.

During the debriefing I tried to identify them. But there were two Americans I saw alive, that I never saw again.

The CHAIRMAN. You don't know their names?

Mr. SCHRUMP. No, I don't.

The CHAIRMAN. About Mr. Varnado, I am interested in that case, in that he is from my part of the country. You saw Varnado alive, and then he was moved away, or what?

Mr. SCHRUMP. Yes, and we never saw him again. But I believe I was the last American to talk to him alive.

The CHAIRMAN. Can these Americans survive over there if they don't have food and proper attention?

Mr. SCHRUMP. It is very difficult, Mr. Chairman, very difficult. However, if they want to take care of you, they have the facilities to do that. If a man is out on his own, I don't believe he could last more than 6 months to a year at the very, very most—a very strong-willed individual, I don't think, could last any longer than that. The food is available. You have to be able to recognize it. If the man was a former Special Forces man or something like this, possibly he could last a lot longer. But I doubt it very seriously.

The CHAIRMAN. Do you think any Americans are alive and were not released?

Mr. SCHRUMP. Yes, I do. I believe they are being held in Cambodia and in Laos. Probably you could count them on your fingers. I like to refer to Captain White, who was held down south and released, as probably the last man to be released—an opportunity to talk to him at some length. He was well taken care of, and kind of had freedom of the camp. But you would have to talk to him to get all the details on that.

But North Vietnam I think possibly is telling the truth, that they do not hold anybody alive right now. I think South Vietnam is telling the truth also. I hate to believe a Communist. They have lied to me so much. But I feel that if they had anybody alive, they would have moved him into Laos or into Cambodia, so that they could make the statement that they have no one alive.

The CHAIRMAN. You say less than on your fingers. How many would you say?

Mr. SCHRUMP. Probably five or six.

The CHAIRMAN. Is this a gut reaction or—

Mr. SCHRUMP. I have no fact of that, sir. That is a gut reaction. I think it is a little more than a gut reaction. Somebody is talking to me, and I don't know who. I just cannot believe that they do not have somebody alive. And I feel they will use it when the time comes.

The CHAIRMAN. Mr. Lloyd.

Mr. LLOYD. What would be the purpose of keeping these people alive?

Mr. SCHRUMP. Why did they keep us alive?

Mr. LLOYD. First—I sincerely hope you are indeed right. But what would be their purpose in doing this?

Mr. SCHRUMP. Well, I always respond with why did they keep us alive? Prior to my capture—

Mr. LLOYD. Don't you think with a combat situation going on, that there was more impetus or drive to keep people alive?

Mr. SCHRUMP. Not until they got the word from Ho Chi Minh. And this was told to us by a very senior political officer, when he gathered all the prisoners together and said just prior to the Tet offensive that Ho Chi Minh put out the word, "You get all the American prisoners you possibly can, for negotiations."

Mr. LLOYD. That would be my reaction.

Mr. SCHRUMP. OK. North Vietnam wants reconstruction aid. They want offshore oil drilling assistance. And they want recognition by the United Nations and diplomatic relations with the United States.

Mr. LLOYD. Do you think they underestimate the American public and certainly this Congress, and the leadership of the United States to the extent they think they can set these people aside for a period of time, and then turn around and bring them back in, and say, "Now we are going to negotiate?"

Mr. SCHRUMP. Yes. But they would say that Cambodia and Laos held them.

Mr. LLOYD. In other words, that it was none of their doing, but now that these people have shown up, "We are willing to negotiate with you on that." That would be the reaction.

Mr. SCHRUMP. Yes. Another thing has to happen. And that is the Executive—the Chief Executive and the Secretary of State have got to communicate. And I don't feel they are communicating. They have set this thing aside. And I honestly believe that Dr. Kissinger—

Mr. LLOYD. The President of the United States?

Mr. SCHRUMP. The President of the United States and the Secretary of State have to communicate on this issue.

Mr. LLOYD. Here in the United States.

Mr. SCHRUMP. Yes.

Mr. LLOYD. I didn't know whether you were talking about with some head of government or intra-Government here. You are speaking of our President and our Secretary of State?

Mr. SCHRUMP. Yes. But I think the only way it can take place is for the President of the United States to tell Dr. Kissinger to go to Paris and start the negotiations.

Mr. LLOYD. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

Colonel, we have been listening with a great deal of interest to your testimony.

Had you received at any time any information of any men that were being held or transported through your region, that you were able to identify and later found no reports on?

Mr. SCHRUMP. No. It was only after my homecoming, talking to other prisoners—some of them were taken right through our area to North Vietnam. But I myself only saw the two men. They were alive. They were in bad condition, but they were alive at the time that I saw them. I was only able to ask for their names, and then I was hit and knocked down into the hammock, and taken away immediately.

Mr. GILMAN. I missed a portion of your testimony on that. Were those men ever reported as having died in captivity?

Mr. SCHRUMP. I wasn't able to identify them. The pictures that I identified, they could not possibly have been them, during the intelligence debriefing. I also saw orders on two men. They brought them to me, and they wanted me to identify the numbers and everything that was on the orders. I read them. I refused to do so. But in reading them, I read the names, and they have them in my debriefing. But what does—orders—they could have found them on the battlefield.

Mr. GILMAN. Do you recall whether those men were ever listed in captivity?

Mr. SCHRUMP. No; they were not.

Mr. GILMAN. This gut reaction that you have, is that based on any information at all that you have received?

Mr. SCHRUMP. I'm very sorry, it is not.

Mr. GILMAN. Had you come into contact at all with any other prisoner that you were able to identify at all, that was not later reported in some report?

Mr. SCHRUMP. No; only those that died in captivity with us.

Mr. GILMAN. In your opinion, would someone who was captured in Cambodia or Laos be able to survive all of these years without having come forward?

Mr. SCHRUMP. Only if he was held captive. On his own, in an escape or evasion-type situation, I don't believe they could survive. But being held, they can take just as good care of you as they can their own people, if they want to. The last 3 months of captivity, we were brought up by 20 pounds in body weight, were exercised, and worked and we looked good when we got off that plane.

We had three types of meat per serving. I ate like a hog, and was stuffed at every meal, when they got ready to send us home. They could have done that all during captivity if they wanted to, except during the Cambodian invasion.

Mr. GILMAN. No further questions.

Thank you, Colonel.

The CHAIRMAN. Thank you.

I just want to make one other comment, Colonel Schrupp.

Our committee is doing everything possible to find these Americans alive. However, in Laos, we met with the chief of staff of the new Communist government, and he told us—but as you say, can you believe a Communist or not—that "We have problems enough feeding our own people, and that as far as I know, we don't have any in captivity." And in Cambodia, we have been unable to establish any contact with them.

Mr. SCHRUMP. I don't think you will for years to come.

The CHAIRMAN. It has been very brutal there. We have done everything possible we can. We even had a man, Mr. Wolff, a Member of Congress, who was in Peking 3 weeks ago, who went to the Cambodian Embassy, and—

Mr. LLOYD. It is kind of scary, too.

The CHAIRMAN. It was a rather scary story. The door was open. They would not answer the door. He walked in and asked for someone. Of course, he was in the Cambodian Embassy. And nobody answered. So finally he put the letter down, and he did what I would have done. He got out of there. But they won't recognize or make any contact with us. But they did get this letter.

I hope you are right. But we are not getting any evidence of it.

Mr. SCHRUMP. Mr. Chairman, I think you are doing a terrific job. I hope that you don't give up on this in any way, shape, or form, and continue the efforts that you put forth. But I feel that we have an obligation to these men, and we have to fulfill that obligation.

My sons are already questioning, "Dad, what is going to happen if I find myself in that situation? Can't the country make an obligation to me as I do to my country?" And I agree with them. I think this is one time we are going to have to take a position, and get something done. I think we have to strive to try to find someone alive. I agree with you there. But I think it is more important to get an accounting and take a position, and it has to be—I just so strongly believe it has to be brought to the American people—and they are concerned, the attitude of the American people. And I think we can go one step

further and deny Communist countries trade, and let them bring pressures on North Vietnam. I think we have to be very, very strong on this. Let's take it to them. But we have to do something. We cannot sit and talk forever, because 3 years have already passed and the possibility of those men that were alive or maybe alive is getting slimmer and slimmer.

The CHAIRMAN. Well, we are basically doing what you suggest. Thank you very much. Very nice to have your wife with us today. Mr. SCHRUMP. Thank you so much, Mr. Chairman.

STATEMENT OF KAREN MARTIN, ACCOMPANIED BY GAVIN LETTS, ATTORNEY

The CHAIRMAN. Our second witness is Mrs. Karen Martin. Mrs. Martin is a lawyer, and lives in Florida. She is a missing-in-action wife. Her husband, Air Force Capt. Douglas Martin, was lost over Cambodia, in April 1973.

Mrs. Martin's testimony is of special interest to the committee.

When the Department of Defense was conducting its mandatory year-and-a-day review of her husband's case in 1974, she challenged any change of status at that time. Her husband continues to be classified as MIA. And I will ask her, if she would, to describe her experience.

Would you identify yourself?

Mr. LETTS. Yes, Mr. Chairman. I'm the lawyer that represented Mrs. Martin at the hearing at Randolph Air Force Base. My name is Gavin Letts.

When Karen first got out of law school, she worked for me as my assistant. So I went out there as just a friend. I also knew her husband very well. And I came up here today at Karen's request. I do not plan to say anything unless the committee wants to ask me some questions.

The CHAIRMAN. Very nice to have you here. You may proceed.

Mrs. MARTIN. Thank you for inviting us. I don't have a prepared statement to introduce into the record. I do have a draft to try to use for my own reference, and later we will provide for the committee a copy of what I have said here today.

The CHAIRMAN. Without objection, if you would like to submit a statement, it will be put in the record. But I would not wait too long on it, because you would hold up the record.

Mrs. MARTIN. All right.

Thank you.

My hope in coming here today is to give this committee a totally different slant on the status review question, which I understand you have had testimony on within the past couple of weeks. And in preparation for this appearance before you, I have read over a lot of the testimony produced on both sides of the issue. I don't care for much of either presentation.

On the one side, the family representatives are accusing the Department of Defense, the executive side, the Air Force, the President of the United States, and the Congress of everything from deliberate falsehood to callous indifference. On the other hand, the Department of Defense is piously stating that the Missing Persons Act is to protect the best interests of the missing and the financial need of the missing

man's family, and at the same time they proceed to subtly produce endless statistics to show that the MIA wives are getting rich at the taxpayers expense. They scold the families for daring to go to court to protect their rights, which the families have done. And they suggest over and over again that no news is bad news, and all the missing are dead.

The truth is that both sides are genuinely concerned over this tragic problem, and everybody is highly motivated, if sometimes ill-advised. And if this is true, I think it is pathetic to hear, read and see the two sides squabbling over the fate of our war heroes, and more personally my husband.

I am the wife of a pilot missing in action who was shot down after January 1973. That is after the war was supposedly over. And just exactly why the Air Force had my husband illegally bombing in Cambodia in April of 1973, bombing a small bridge on a dirt road, I will never know. And I was out there in Southeast Asia with him at the time, and he didn't know either. But we had both been raised in military families—his father a major general, and mine a colonel. And he was loyal and disciplined and followed orders. He loved his country, and was prepared to die for it. And maybe he did die for it. But then again, maybe he lives. And that is why I am here today.

I have been asked to talk of my experiences at the first status review hearing called for my husband by the Air Force. It took place approximately one year after my husband was declared missing. Pursuant to a court decision which was made just before that hearing, I was given the opportunity to retain counsel if I so chose, and I did.

I would like to start by saying that the people who staffed the Randolph Casualty Office are not villains. They are unfailingly courteous. They always answer my letters and inquiries promptly, as best they can, and I am sure they are decent, well-motivated men. But on the other hand, they very openly admit they believe all the MIA's are dead, and their entire machinery and modus operandi is set up to change the status of MIA's if they can. It cost me a total of \$6,000 to fight that status change and win. As a lawyer myself, and a human being and a grieving wife, I don't care for the way they operate. And I am not suggesting that they wish all the MIA's dead. In fact, I am sure nothing would please them more than if they would walk through the door very much alive. However, they firmly believe now that all the missing are dead, and they firmly believed the same thing in June 1974, when I went for the hearing which was called by the Air Force.

My lawyer was told at the casualty office at Randolph in June of 1974 that the only men left in captivity at that time were a few deserters and deviants, and they told us further that our vigorous legal effort on behalf of my husband complete with two lawyers hired at my own expense, one court reporter and several visits to the base to examine my husband's file was unwarranted, and was an unfair and tragic burden to the other wife of the man who was the navigator in my husband's plane. Their contention was that it was unfair to her, because she wanted her husband's status changed. And it may sound a little melodramatic, but my lawyer and I would both be willing to take polygraphs regarding the statements made to us at Randolph Air Force Base by the casualty officers there.

The point I am driving at is simply this: The casualty officers had made up their minds before a hearing was ever called that my husband should be declared dead. Now, they have by their own admission been wrong in the past. I remind you my husband and three others became missing after the cease-fire in 1973. And the casualty office could be wrong again.

I would like to turn to my particular case and review some of the details of it.

I received written notice in Florida on Good Friday, April 12, 1974, by certified mail, that my husband's status review hearing had been set for the following Tuesday, April 16. So that gave me 4 days notice to go to a hearing 1,500 miles away at which I was permitted to have an attorney; 4 days for him to prepare for me to get evidence, and so forth.

The CHAIRMAN. I think Mr. Lloyd—if you don't mind—

Mr. LLOYD. Would I take you off track if I asked questions in the middle of your statement, or would you prefer I not and wait—

Mrs. MARTIN. No; that is fine.

Mr. LLOYD. I'm a little surprised that the Air Force gave you such short—as indicated by you—shrift and notice of this meeting. Did you ask them for either a postponement or state to them the problems this hearing date and time would present to you?

Mrs. MARTIN. Yes; we definitely did. Your question would be answered next.

Mr. LLOYD. All right. I'm sorry. I will wait.

Mrs. MARTIN. That is a good question. We did make the efforts that you talked about.

At the maximum, I could have had 6 days notice, because the letter they sent to me was dated April 8. But even assuming good mail delivery, I would have gotten it at the earliest by the 10th for a hearing on the 16th.

Mr. LLOYD. I just got a letter that took 15 days to come to California. So you are really very fortunate.

Mrs. MARTIN. Now, you may be told later by the casualty office they let me postpone my hearing until June. But don't believe that flexibility. I had to hire a lawyer in San Antonio, Tex., that afternoon, on Good Friday, after having received this notice, to threaten, write and bargain for the extension, and his legal fees cost me \$2,200. In the same notice of hearing, which I got in the mail from Randolph, that Good Friday, they informed me in writing that classified material could not be used at the hearing, nor could it be considered upon review by the Secretary of the Air Force. In other words, if there was any classified evidence of my husband's death or capture, it could not be considered in determining whether he was alive or dead. That seems incredible. And I agree, it is incredible.

In my case, as it turned out, there was classified evidence in the form of an intelligence report, however vague that report may have been, which considered the possibility that my husband had been seen as a captive. And I have a copy of that report. I will make copies for the committee and see that you receive them.

How did I find out about that report? I did not find out from the casualty office or the Department of Defense, because they had on prior occasions denied to me that they had any such report. The report

was discovered by the father of my husband's navigator, who went at his own expense to Thailand, to the Joint Casualty Resolution Center, and poked around in the file that he was not supposed to see, and there he found it. We fought hard to get that report produced, so it could be used at the status review hearing.

One other point I want to make is that when we were notified of the hearing we learned that the members of the reviewing board, the three members, were going to be from the staff of the casualty office. These were the same men who investigated my husband's status, reviewed the files and concluded long before the hearing in their honest opinion he was dead. And they were now to sit as judge and jury on their own investigation. My lawyer was incredulous, and successfully persuaded the head of the Judge Advocate General's Office to bring in an independent board, which they did.

Then at the hearing, we were faced with another very difficult personal problem, which goes right to the heart of what this select committee is trying to do; that is, be fair to all concerned.

Specifically the other wife whose husband had been in the same plane with my husband wanted her husband declared dead. I had known her personally and she is a wonderful woman and a good mother to her child, and her reasons for her decision were every bit as good as mine. My distress arose because of the open statements made to my lawyer and to me to the effect that my attitude was unfair to the other wife in attempting to keep my husband in a missing status.

There is a point to all this which transcends the personal agony of either the other wife or myself, and it hit us hard as the status review hearing went on. The status review laws simply are not adequate to protect the missing man. Neither my husband himself nor the navigator in his plane were personally represented at the hearing. I was represented. The other wife was represented by the casualty office, but there was no one there to represent the two men. Those two men were to live or die depending on the emotional states of their wives.

I am a practicing lawyer myself, and many of you in Congress are also trained in the law.

Mr. LLOYD. I am not.

Mrs. MARTIN. Well, it is elementary that when there is any proceeding held in court and one of the parties cannot appear, a guardian ad litem or attorney ad litem is appointed for him. We know this is so, and yet it is not the case in the law on missing servicemen. It should be and the law needs to be changed to guarantee the missing man representation at those hearings.

There is another sad aspect to my own personal experience and that is that the parents of the other pilot in my husband's plane came to the hearing. They didn't want their son declared dead, and they were receiving no financial benefits by keeping him alive, but under the present status review, they had no standing at the hearing, and my lawyer was not allowed to represent them. To be in the position of a father and mother meant nothing. Only the wives had status.

The missing man really had no status. Only his wife could decide his fate. The father of the navigator wasn't even entitled to attend the hearing under the regulations. The casualty office did let him come however and I am sure part of the reason they did that they couldn't keep my father-in-law out who is a major general in the Air Force,

and bless him, he said he was coming to that hearing, so before the array of brass, the casualty office wilted, and the father of the navigator was permitted to attend the hearing with his wife.

I think it is a shame that perhaps I received better treatment and better results because of my Air Force connections and my access to legal talent, which those less fortunate than I am might not have.

I would like you to consider what the results are of the attitudes of the two wives in this case when the men were in the very same plane. Just because of the personal whims and wishes of the wives, one man is listed as missing in action. His companion has been declared dead, and such a result is completely absurd, because one had just as much chance to live or die as the other. They were in the same plane. Yet the fate of each was decided by the uninformed emotions of the wives.

There is some danger to me in this testimony that I am giving in that you or the Department of Defense may say "Well, if she thinks that is an absurd result, maybe we had just better go ahead and declare her husband dead too." That is a chance that I have to take. While there is no hard evidence that my husband is alive neither is there any that he is dead, and under the mysterious disappearance statutes of most States he couldn't be declared dead for 7 years. He is better protected under State law than the present Federal law.

I presented the following in a hope to establish that the law as it is presently written does not protect the best interests of the missing man. Even the current standards which were established under the *McDonald v. McLucas* case are not adequate.

Another problem with these hearings is the place where they are held. They are held at Randolph Air Force Base for the Air Force, and the expense of getting out there is enormous, and it has got to be borne by the next of kin, and you can't just fly out there a half hour before these hearings and expect to review the records adequately. The records are voluminous. They may take several days of study even for a trained lawyer. You cannot remove them from the offices, and in my case, my attorney went to Randolph Air Force Base and read the files there. He was flanked by three casualty officers at all times. They were always polite, but they let him know in no uncertain terms that my husband was dead and the proceedings were a waste of time.

The regulations require that you prepare a written statement in preparation for the review hearing and you can hardly prepare one of these statements without having read the file, and you can't read the file until you go out to San Antonio, so we were required to get stenographic help at our own expense and copying equipment to produce a 10-page brief in preparation for this hearing, plus all the exhibits. All this we tried to do on a weekend immediately before the hearing.

Now I estimate the total cost of this hearing to me was approximately \$6,000, and it was necessary for me to spend a portion of my husband's salary on this hearing even though I have a high paying job and no children. Wives of other men are probably in much less fortunate circumstances, and the burden is practically unbearable for them to exert their rights, attending a hearing and attempt to continue a missing status. Most of them could not do what I did. That is why I think existing law needs some changes.

While we are on the subject of the finances, I have got some very definite views on the continuing references which the Department of

Defense is making to the cost of continuing this missing-in-action program. In the past I think they have hinted that—

The CHAIRMAN. Just a little louder.

Mrs. MARTIN. In the past I think they have hinted that wives want their husbands' statuses continued because it is generating a financial gravy train for them, and I think they are too sophisticated to put it in exactly those terms, but they are doing it very subtly, which I noticed from reading the transcript of hearings here approximately 2 weeks ago in which the Department of Defense testified, and in that testimony they indicated more than once that a missing-in-action wife is much better off than a woman whose husband is declared dead immediately.

I reject these contentions. There may be some wives who are continuing husbands in a missing status for the money, but the vast majority of us, myself included, would much rather know one way or the other and have this situation resolved. I am repeating, know one way or another. At this point the Department of Defense doesn't know anything itself. In my own personal case as for my husband's salary the only part of it I have spent since he was shot down in April 1973 was money to pay our joint debts, money to assist me with his status review hearing, money I have spent on the missing-in-action issue, coming to league meetings and working some with VIVA. I have saved nearly \$40,000 of his income these past 3 years, all of it in a deposit savings account in his name for him. Parenthetically I would add the Air Force and Department of Defense apparently have access to these personal accounts because they quote some numbers, and this is obviously a violation of the right of the privacy, and they don't have a right to monitor these savings accounts of individuals and their families.

I also resent the inference that I have been unjustly enriched by the money in that account. First of all, if I haven't spent it, I don't derive any benefit from it, and I am saving it specifically for my husband. That is what the account is for. Even if I wanted to take out the money at this time, as I understand it, I could not without a written reason which was considered acceptable by the accounting and finance center.

On the question of the total cost of the MIA program to the Nation, I think the sum is just a drop in the bucket compared to other expenditures. Even if you figure it at an average of \$20,000 per year per man still carried as missing, and I believe that figure is 832, the total cost is only \$22.2 million a year. My husband's one jet cost \$5 million, not to mention the cost of the ordnance he expended on a small bridge in the middle of nowhere or the cost of one sortie.

Billions of dollars of military equipment is mothballed or junked every year. By comparison, the \$22.2 million is a drop in the bucket, and recently the Air Force has been requesting the B-1, and I don't know the exact figures, but I understand the cost of single B-1 will be \$20 million.

Mr. LLOYD. \$84.7, but that is all right.

Mrs. MARTIN. \$84.7 million for one plane?

Mr. LLOYD. There are five ways to come up with it. Since you are picking a figure, there are five ways to determine that, and I have

given you the one that is the most expensive, but that is not germane, but if you want a figure, it runs from \$45 million to \$84.7 million.

Mrs. MARTIN. Let's say that is for one single plane, and I understand they want approximately 244 of them.

Mr. LLOYD. That is correct.

Mrs. MARTIN. The cost of that runs into the billions of dollars, and the miniscule sum involved in the continued missing status of these men is just an absolute drop in the bucket.

There is another statistic the Department of Defense is citing and that is as follows: Missing-in-action wives are entitled to all sorts of extra benefits which a widow does not get. I am not a widow, but I am not taking advantage of these things, and neither are other wives, and I am talking about things like excess military housing, which most of the time is located in Timbuktu, and I don't know how many wives remove themselves to live in these places, and other benefits are listed which most MIA wives don't have an opportunity to take advantage of. Many of us don't live near an air base, so I hope the committee realizes that these statistics tend to portray the MIA wives as freeloaders and parasites on society who ought to confess at once that their husbands are dead and they know it.

Now whether the Department of Defense intends this or not, I can't say, but it isn't any accident that they are producing these figures regarding costs to a cost-conscious Congress, and it is equally obvious that the Government is trying to suggest it just isn't worth the price. I don't agree. If it was worth the price for my husband to be shot down and missing in an attempt to destroy a meaningless target in a supposedly neutral country after the war, then it is also worth the price not to abandon hope for him in an oriental country where the records show that political and military prisoners are kept incommunicado for years on end.

Now there are some other examples from our own case of inflexible behavior on the part of the casualty office, and I repeat again that I think the personnel there at that office are well motivated and hard working, but as an Air Force brat myself I think I can say without giving too much offense that the attitude of the military is not designed to allow diverse opinions and, to put it bluntly, what is ordained from on high, well, that is the way it is going to be.

I have a few examples of the inflexible behavior that we ran into. I initially received general correspondence from the casualty office after my husband was shot down stating that certain Communist broadcasts were to be regarded as nothing but enemy propaganda, which was highly suspect and ought to be discounted, but in my husband's particular case, the casualty office clung repeatedly to two Communist messages to the effect that my husband was dead.

Now quite apart from any prior official pronouncements they made, and we received a message saying these are propaganda messages, the casualty office continued to cite them. Even those reports themselves were contradictory in what they stated. They had the wrong date of the shootdown. They had the wrong place of the shootdown. They did not name my husband. They did not name his navigator, but, notwithstanding these things, the casualty office continued to quote the two reports over and over while at the same time refusing to give any credence at all to our own intelligence reports which I have

already referred to at the beginning of this presentation. In fact, as I have said, they hadn't even put the U.S. intelligence report in the file although there were several entries on these Communist messages.

One other example. A good friend of my husband's, also a fighter pilot, tried to contact me about my husband's shoot down and the casualty office never relayed his message to me, though their file says, Sent letter. My attorney found the other pilot's request for my address in the files out at Randolph, and when we contacted that friend of my husband, he gave us valuable affidavits for the hearing which helped substantiate that my husband could have ejected, based on this other pilot's examination of the crash site and his knowledge of the ejection system. That was an impressive piece of evidence to the reviewing board.

I don't want to take too much time here, so I would like to come to a conclusion, and I want to repeat my unshakeable conviction that the Department of Defense and the casualty office want the missing in action declared dead as soon as possible. That is not to say that they wish these men dead because I don't think they would.

The CHAIRMAN. A little louder. There are some families here that would also like to hear your testimony and they are having problems since we don't have the benefit of a public address system in this hearing room.

Mrs. MARTIN. I will repeat what I said.

I stand firm in my conviction that the Department of Defense and the casualty office want the missing in action declared dead as soon as possible, and I don't mean by that that they wish these men dead, because I don't think they do, and in truth, no one knows whether these men or any of them are alive or dead. Neither does our Government. Accordingly it is more convenient for the Government to adopt the theory of death at this point, which I am sure they have discovered too, and thus they tend to dwell on evidence of it, and how lack of any other information supports the theory of death.

Now to protect themselves from sounding callous, the Government representatives are always quick to reassure us that a declaration of death does not mean they will try any less hard to determine the fate of our loved ones. In response to that I ask you what are they doing at the present time to make this determination? Their answer to this committee, I am sure, will be that they try by every means to establish the fate of these men. Please ask them what every means consists of. I have done so, and when they are pushed, they retire behind veils of supposed secrecy and talk about how difficult it is to obtain information.

The present law must be changed, regarding status reviews, in several respects. First, the missing man himself must be represented at the hearing so that his fate is never decided by the subjective whims and caprices of his wife or his family.

And second, the decisionmaking tribunal should not be made up solely of people from the Randolph Casualty Office or the military or the executive, who are largely under orders to achieve the results obtained, and who also openly advocate this even though they sit in judgment of the status reviews.

I might add parenthetically at this point that my father-in-law is career military and spent 30 years with the Air Force, and he was

not about to believe for 2 seconds that we wouldn't receive the most fair treatment possible, and for that reason he never set foot in the Randolph Air Force Base Casualty Office to review my husband's records until the very day of the hearing. In that day that we were there, and in conversations that he had by phone before going to that office, it became apparent to him that orders had come down from somewhere that statuses are to be changed, and in my father-in-law's opinion, these were not the kind of orders that would come down in writing. They would come down by word of mouth.

Third, more procedural rules should be put into effect to secure, for example, enough time to enable an attorney to prepare the case. Plus that, all information should be made available to the families regarding life and death and should not be excluded because it is classified.

Parents also ought to be permitted to attend these hearings in which the status of their sons is going to be determined. Whether he lives or dies will be determined at that hearing and they should be permitted to attend.

Finally, I am going to refer to the committee's own report of action taken to date on the missing-in-action issue, and I note that you say: "The brief record of efforts in the past 6 months since the committee was formed"—and I am referring to the fourth line of that particular letter which says that you have " * * * made several independent efforts to communicate with the Cambodians, in Peking, Laos, France in Vietnam" and you are still waiting to hear from them.

My husband was shot down in that very same country from which you and I are still waiting to hear. Apparently you don't have any more hard evidence as to whether my husband is dead or alive than I do, so I feel as though I have got to rely on the actions of this committee to prevent a status change until my husband is accounted for, until there is more information from this country.

He was an academy graduate who volunteered to serve his country. His country ought to do the same for him. I think that common decency requires a complete accounting be obtained before he is written off, and I simply can't believe that if his status is changed, our Government will continue to aggressively seek an accounting from the Communists after he is declared dead and all the other missing men are too.

I think it is ironic that it is the military that now wishes to close the books on its own men, for one would suppose that the military, of all establishments, would fight hard to protect those who gallantly fought for it.

The casualty office insists there is no hard evidence that any of our men are alive today, and that lack of hard evidence is tantamount to death. I submit that such presumptions are contrary to law and due process for usually the hard evidence would have to be of death and not life in any court of law.

I have asked Department of Defense representatives to explain what hard evidence means, and I don't know that I have ever received really satisfactory answers, but I gather there is at least soft evidence that POW's are alive in the form of occasional reports which are branded as unconfirmed in nature by the casualty office and DOD.

Members of the committee, whether the evidence is hard or soft, it should be enough to rebut a presumption of death.

At this point, to give you a further understanding why some of us are so concerned about the attitude of the casualty office, I would like

to read an interoffice memo which I found in my husband's file after I went to the status review hearing. It is dated April 2, 1974, and it is written by Col. A. W. Gratch, who is chief of the casualty services office. He says:

Contacted General Kingston as a result of a call from his secretary regarding Captain Martin. Mrs. Martin, wife, wants to visit him on the 27th of April. He doesn't want to see her but could do nothing to get her turned off. He requested guidance as to what the party line would be. I advised that this is a rather unique case in that it is coming up for end-of-year review on 18 April and that we were in the process of notifying Mrs. Martin of the hearing in accordance with the court order (this is being slightly delayed due to the formulation of our internal procedures, that is, the regulation being approved). Hopefully, by the 27th this will have been overtaken by events. There is a good possibility the status could be changed by that time. Told General Kingston we would keep him advised and if she still insists on coming out there, we would provide him additional background material on her and what the general party line is regarding status changes and search for remains. He said he was certainly appreciative of the assistance in this area.

Action: Note on the case file—keep General Kingston advised of our actions.

Here is a message written by the chief of the casualty division saying he hopes my husband will be declared dead before I have a chance to talk with the former head of the JCRC.

It is things like this which leave the families of the missing greatly disturbed, so I want to thank you for listening to me, and I will be glad to answer any questions. My attorney is here to answer questions, also. If you would like to have any of the exhibits from the status review hearing, I can arrange to have them reproduced.

I have got one last thought, request of you, really. If the Department of Defense or the Casualty Office tries to rebut any of my presentation either by written report to you or oral conversation, I would like to have a copy of their rebuttal or an opportunity to respond.

The CHAIRMAN. There will be no problems on that. We would like to thank you for that very strong and sincere statement.

I might say that I have talked to Secretary Rumsfeld this week, pertaining to classified information, and I have also talked to Colonel Hopper about it this morning. We hope we can come up with a classification change except for a couple of exceptions such as coding and the name of the intelligence source that would open up the files almost totally, so we would not have that problem again with next of kin or families on the classification issue. Mr. Rumsfeld agreed with me, and the word has come down from the Secretary of Defense to get something moving, so we can clear up this classification situation.

Mrs. MARTIN. I would like to say one thing here. We have got a real problem. I think the families have a real problem with classified information that, No. 1, as in my case, when I asked the Casualty Office if there was any classified information subsequent to the date of my husband's disappearance, they said, "No." When I asked if there were any reports of POW sightings in Cambodia, however vague, that could even remotely pertain to my husband, whether confirmed or unconfirmed, reliable or unreliable, they said no. I would have had to take their word for this, except for the fact that the father of the navigator at his own expense had gone to Thailand to the JCRC. He didn't find much information in his son's file there, and, according to an affidavit which the father signed, he asked whether there was any more information. They said no. He turned to the back of his son's

file and saw a hand receipt for reports in the secret or top secret drawers, I don't know which. He said "Can I see these reports?" and the person in charge of the records said "No, unless General Kingston allows you to do so."

The CHAIRMAN. We are getting that worked out, and we understand the problem. I only have one other comment, and Mr. Lloyd has some questions.

Being connected closely with the military, I am sure you understand that we are not going to be able to come up with complete answers of what happened to all of these Americans missing in action. There is no question that the North Vietnamese have some information about individuals. I don't think the Cambodians have much information nor the Laotians. I don't think they kept records, but there is just no way we are going to come up with complete answers. I just wanted to mention that to you.

As for the Korean war, as I understand it, a presumptive finding of death was made for 4,735 U.S. servicemen, and none of them have come out alive. Of course, as I keep repeating, we would hope that all of them did, but none since the early 1950's have been found alive, and we were not able to get any information on these Americans.

What did you mean by the missing man being represented at these Air Force hearings?

Mrs. MARTIN. What I mean is this: I think there should be an attorney appointed for the man himself. Regardless of what my personal wishes were in the case, let's assume that I had wanted my husband declared dead, there would have been no one there to represent him. My husband is the one who has some rights. Let's assume that he is living. He is very much affected by those proceedings.

There ought to be someone there who is there to represent the missing man, and whose presentation isn't going to be based on emotion, because I am afraid too many of these cases are going to be decided on the wife wants this or the wife wants that, when in fact perhaps she should have nothing to say about it. I would like for my lawyer to make some comment on that since he is familiar with that aspect of it.

Mr. LLOYD. I would have some questions.

The CHAIRMAN. Go ahead, Mr. Lloyd.

Mr. LLOYD. Thank you, Mr. Chairman.

I am sorry but unfortunately, as you probably know on the Hill, we have only so much time, and I appreciate what you are saying. You want the individual to be represented by an attorney. That is not a point that I am going to get involved in. I may or may not agree with you. I think I tend to disagree on that area. I don't think that a wife or a family will allow, as evidenced by your presence here, for this thing to be dropped, so I am negatively oriented on that point.

I have a series of questions, and will try to get them out, and I hope they are not so complex as to force you into the area of long answers. If so, I will try to bring them around.

One of the questions that you brought up, and I do want to emphasize, one, I am very much sympathetic with your position. I think you have raised some extremely fine points. I think the point that a wife can arbitrarily make a decision regarding a husband who has been a

husband for a number of hours, not days, over the top of parents who have no control in the situation, is a terribly arbitrary and unfair situation, perhaps necessary, I don't know. If anything else comes out of the hearing this morning you can rest assured that I am personally going to pursue that because I have had in my career the opportunity, and an unpleasant one it is, to notify both wives and parents that their husbands would definitely not be coming back. It is tough. You can't tell the parents, because the wife somehow feels that she doesn't want that information out, so they are left out in the cold. I think it is a very valid point, I really do.

In this thing I am not trying to put myself in an adversary position, and some of the questions I think because of the shortness may have that appearance. Not intended, OK?

Mrs. MARTIN. All right, sir.

Mr. LLOYD. What would the advantage be to you if your husband, we will arbitrarily say in the light of all things, was continued missing in action? Is there any advantage that would accrue?

Mrs. MARTIN. Yes; I think there is a much better opportunity for him to be accounted for. I firmly believe that if his status is changed, that is the end of anything but perfunctory efforts on his behalf. The Communists will say, "Your Government says he is dead." Our Government will say to the American people "that man is dead." I think efforts for him will end when his status is changed.

Mr. LLOYD. On a yes or no situation, you have tended to indicate the system is bureaucratic, and geared to frustrate any will other than that of military authority. Is that a good statement of some of the things you have said?

Mrs. MARTIN. Yes.

Mr. LLOYD. You alluded to the differences in attitude on the part of the people that you were talking about in this case, the Air Force, with regards to the status of a wife of an MIA rather than perfunctory finding of death. Is an MIA wife better off than a perfunctory finding of death wife?

Mrs. MARTIN. Than a perfunctory finding of death?

Mr. LLOYD. I am sorry, presumptive, PFOD. It is a term they use. In other words, is an MIA wife better off than the wife of a person who has been declared dead?

Mrs. MARTIN. If she is spending her husband's money I suppose she has got added finances.

Mr. LLOYD. You pointed out that those were not as great, and I am addressing myself to that economic situation. You don't understand what I am saying?

Mrs. MARTIN. No.

Mr. LLOYD. There is a difference in status, as you have indicated, between an MIA wife and the wife of someone declared dead.

Mrs. MARTIN. Right.

Mr. LLOYD. That status has some economic overtones which were alluded to; is that correct?

Mrs. MARTIN. Right, it does.

Mr. LLOYD. In your opinion then, is the MIA wife better off economically than the wife of a person who has been declared dead?

Mrs. MARTIN. It just depends. It is a tough question to answer. If the man has been declared dead, some husbands carried substantial

insurance policies. That gives the opportunity for that wife to take that money, invest it in real estate, for instance, triple that money within 5 to 7 years. I can't answer that question exactly.

Mr. LETTS. Mr. Lloyd, would you permit me to make one statement on that?

With regard to income, it obviously must depend on whether the MIA wife spends the money she continues to get, so in that time frame—

Mr. LLOYD. I have a question regarding that also. Outside of your own personal attitude, does your testimony regarding pay really make a difference to the finding and recommendations? As you know, I am coming right directly to that statement you just made, the findings and recommendations of this committee. In other words, do you feel that the point you made to us regarding the fact that outside of your own attitude that you had retained the money, do you really feel that makes a difference to this committee in its findings?

Mrs. MARTIN. I don't think the money should have anything to do with the decision the committee reaches. Sometimes I wish that the military would find a way to settle accounts with all these families and keep the men in a missing status. Stop the payments if necessary, but keep the men in a missing status, so that there is a better opportunity to have them accounted for.

Mr. LLOYD. How long should this committee continue?

Mrs. MARTIN. Until it has exhausted every possibility.

Mr. LLOYD. Give me an estimate of time in there.

Mrs. MARTIN. It is hard to say. Until you have been able to negotiate with the other side, sit down at a table with them and perhaps have some really meaningful exchanges, and maybe it is going to take giving them aid for reconstruction, which at this point our Government is taking the position they are blackmailing us, they are not getting a nickel.

Mr. LLOYD. You do know this committee is to cease in September, the 11th of September? Did you know that?

Mrs. MARTIN. Yes; I learned that.

Mr. LLOYD. With that in mind, and the question itself now addresses itself to that, do you want us to go to September 11 or do you want us to go to January 1? Would you suggest we go to 1977, 1978, 1980? These are questions we have to answer.

Mrs. MARTIN. I would suggest that you do it a year at a time. I would suggest that the committee perhaps remain in operation for one more year, or perhaps set up a smaller group which will remain in operation for that length of time, because apparently you have had some overtures from the Communists regarding a desire to exchange information in exchange for aid. You don't have time to look into that before September, to negotiate with them again, and I think you should have that opportunity, so I would say another year, and you can look at it after the end of that year.

Mr. LLOYD. You spoke of hard evidence. You said until and unless this committee is prepared to give me, this committee or governmental agencies—we do not necessarily interface with the agencies in DOD by any manner of means or the Department of State. You do understand that. You understand that this committee does not have direct

authority over the Department of Defense or the Department of State. Do you understand that?

Mrs. MARTIN. Yes.

Mr. LLOYD. You used the term "hard evidence." The hard evidence that you seek may never be coming. Would you accept that? It may never exist. We may never get it. Is that a possibility?

Mrs. MARTIN. Yes, I think that is a possibility, but I think it is too soon for you to come to that conclusion. I think September 11 is far too soon, that you need to operate beyond that date.

Mr. LLOYD. I understand that point, but if you were sitting up here, I think the question I am asking is: How long do you want me to hold off? I don't want to be insensitive to this, and I am not trying to put you in an adversary position. I really am not. I am honestly trying in my own way to get some sort of a time frame that you want me to react to commensurate with the charged responsibility of the chairman and this committee, and I am trying to address myself to that. People say "Don't cut it off." OK, I am willing to say let's review that. We won't cut it off. To when? How long?

Mrs. MARTIN. I am saying stay in operation for 1 more year beyond the point of September 11, for another year.

Mr. LLOYD. Would you be willing at the end of that year to say "Hey, that is right, we are all through now"?

Mrs. MARTIN. Depending on what your findings are at the end of that year.

Mr. LLOYD. Let's say that the findings, because we know what has happened until this time, we really do know. We know how fuzzy it has been. We accept all of that. Let's extend it for a year with exactly the same situation that you have now. In other words, the dynamics may be exactly that. That is certainly one of the possible alternatives, isn't it?

Mrs. MARTIN. Are you saying that assuming you stay in operation for 1 more year, during this year the Communists absolutely refuse negotiation?

Mr. LLOYD. We end up with exactly the same thing and you come back to me a year from today. What do you say then to me? I could extend this and you see the dilemma I am in?

Mrs. MARTIN. Yes; I do.

Mr. LLOYD. I don't have an answer. I am asking you.

Mrs. MARTIN. Well, at the end of the year if you have made extraordinary efforts—

Mr. LLOYD. You see, you don't define that term "extraordinary efforts." You are an attorney, and you would not accept that statement in a court of law.

Mrs. MARTIN. You are right.

Mr. LLOYD. You know it and I know it.

Mrs. MARTIN. I think that means prompting and encouraging the executive to sit down at a table with the other side and negotiate, and if that means possibly coming up with some aid or trade, which we will give them eventually anyway, then let's talk about that.

Mr. LLOYD. I want you to know one thing. There are those of us, and I happen to be one of them, who is not really highly motivated to that assumption. I am not just wildly excited about rushing off with Vietnam, Cambodia or Laos to start doing trade. There may be others

here who see it differently but I am not. I want you to clearly understand that.

The CHAIRMAN. You mean reconstruction aid?

Mr. LLOYD. Yes.

Mrs. MARTIN. Here is another point that I want to make. The committee wouldn't necessarily have to continue in operation in order for these men to continue in a missing status.

Mr. LLOYD. I agree wholeheartedly with you. That is the point that I would like made. I am saying that we could go step by step into the year 1980 easily with the procedures or processes that you have suggested, and you are not wrong. Don't misunderstand me. There is no moral judgment in this thing. I am not asking these questions because I am trying to position you. I think you have had enough of that, and I think your point has been valid in that. I don't think you ought to be positioned. I don't think there should be the necessity of hard choices. I don't think that a choice that you make as far as a file is concerned, as you have pointed out, if you wish to have your husband presumed dead, that is your business, but maybe his mother and father would like that file to remain open. I think we ought to have a status that provides for that. I think that is a sensible approach.

I think that in the consideration that has come up that that is a good point, but the point that I do make to you, and you have just made it for me, is that this committee does not have to stay alive. There are others who disagree violently with that. They say absolutely. They told us when we were out in Los Alamitos "You are our hope." Mr. McCloskey and I were out there. "Without you we cannot go forward."

Do you really believe that is true?

Mrs. MARTIN. Not necessarily, and let me ask you this as members of the committee who have had an opportunity to communicate with the executive. When you go out of existence, will there be an effort made at the executive level to continue what you have started?

Mr. LLOYD. I don't know.

Mr. Chairman?

The CHAIRMAN. No matter when we go out of existence, the work of this committee will either be transferred to the International Relations Committee or the Armed Services Committee. I have talked to both chairmen of these committees, and we will get together and the work of the select committee will be carried on, maybe not as actively as the committee has done this year, but the files will not be closed.

As for the executive branch, we are told there are some activities still being carried on in the Defense Department gathering information about those who have been declared killed in action in World War II and Korea. I think it will depend on how hard the Congress would push the executive branch as to how much they would actually carry on after the committee went out of existence.

Mrs. MARTIN. Might I ask my lawyer to respond with some of his views?

Mr. LETTS. Just four words, Mr. Chairman. The only thing I say, sir, is that you can go out of existence in September, but legislate it so the executives can't kill off all these boys until they get a full accounting. That is the attitude of the League of Families, VIVA and all the rest of them. They want you to protect them from the military

from declaring them dead. I promise you, and I will a year from now send you a birthday card reminder, they are going to have status hearings coming out of their ears just as soon as you guys are finished. They are only holding off until you are finished, depending on what you do, but if you can stop them from killing them off until we have a full accounting—

Mr. LLOYD. I object to the use of that word. That is exactly—I am sorry, Mr. Chairman—that is exactly what she was talking about. You are positioning. I agree with her. I think her findings are correct. I think that none of those people in the Department of Defense are negatively motivated in this any more than I am one way or another. I think your use of the words "killing them off," if you disagree with our involvement in South Vietnam, I would tend to agree with you at this point, no argument about that, but I think that you are unnecessarily positioning with the use of that kind of—

Mr. LETTS. Then I apologize.

Mr. LLOYD [continuing]. Emotion word.

Mr. LETTS. I apologize to you, sir. I only mean that they will tell you that they believe they are all dead, and if they believe they are all dead, then it would flow naturally that from good motivation they would in fact seek to so declare them.

Mr. LLOYD. That is an assumption on your part.

Mr. LETTS. Yes, sir.

The CHAIRMAN. Mr. Letts, I think that if this committee had not been formed, and the House of Representatives had not shown an interest, that there would have been much faster action taken, so by the formation of this committee in effect we had another year of looking into this very involved situation.

Mr. LETTS. I agree with you, sir, and I appreciate it.

The CHAIRMAN. Do you have any other questions?

Mr. LLOYD. No thank you, Mr. Chairman.

The CHAIRMAN. Mr. Letts, do you have any other comments? You have come a long way.

Mr. LETTS. No, sir, I have irritated Mr. Lloyd enough. I will say no more.

Mr. LLOYD. I am not irritated. I want fairness, that is all I want.

The CHAIRMAN. We have enjoyed meeting both of these people today. If there is no other comment from either Mr. Letts or the charming lady, the committee now stands adjourned subject to the call of the Chair.

[Whereupon, at 11 a.m., the committee was adjourned, subject to the call of the Chair.]

HOUSE SELECT COMMITTEE ON MISSING PERSONS IN SOUTHEAST ASIA

WEDNESDAY, JUNE 2, 1976

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON MISSING
PERSONS IN SOUTHEAST ASIA,
Washington, D.C.

The select committee met, pursuant to notice, at 9 a.m., in room 340 Cannon House Office Building, Hon. G. V. Montgomery (chairman of the committee) presiding.

Present: Representatives Montgomery, Gonzalez, Moakley, Harkin, Lloyd, McCloskey, Gilman, and Guyer.

Also present: J. Angus MacDonald, staff director; Jeanne Shirkey, administrative assistant; Dr. Henry J. Kenny, Dr. Job Dittberner, and Mr. John Burke, professional staff assistants.

The CHAIRMAN. The select committee will come to order.

If there is no objection, pictures may be taken, unless you have an objection, Mr. Moakley.

Mr. MOAKLEY. No objection.

The CHAIRMAN. We have as witnesses today three missing-in-action wives. We are certainly glad to have these ladies testify before the select committee. Mrs. Maureen Dunn, who is on my left, Mrs. Anne Hart, in the center, and Mrs. Kay Bosiljevac, who is on my right.

Mrs. Dunn is a former chairman of the board of the National League of Families. She is the wife of Comdr. Joseph Dunn, Jr., who was lost over Chinese waters in February 1968. The Chinese reported to President Ford in December 1975 that they had shot down a U.S. aircraft, but had no information on Commander Dunn—he was a lieutenant at that time. He is still carried as missing in action.

Mrs. Bosiljevac is the wife of Air Force captain—I believe he has now been promoted to Major—Bosiljevac, who was lost over North Vietnam in September 1972. She has been active in the National League of Families. Mrs. Hart is the wife of Air Force Maj. Thomas Hart III, lost in Laos in December 1972. She has been active in many family organizations, working on the Americans missing in action.

The testimony of these MIA wives on status changes and the rights of MIA's will, we hope, supplement previous testimony. We are very pleased to have our three witnesses today. They may proceed in any manner they would like.

I would suggest, since they have prepared statements, that they read the statements. Sometimes we find this is better, to read the state-

ment—it covers the matters more, and the members have the opportunity to ask questions.

Mrs. Dunn, would you like to proceed?

STATEMENT OF MRS. MAUREEN DUNN, RANDOLPH, MASS.

Mrs. DUNN. Sure. First I would like to thank you for allowing me to testify. I shouldn't say this—I haven't had the pleasure of meeting you all personally, but I have you two—and I am really distressed there are not more committee members here. And if this is the attendance they have been showing for the whole thing, I think they have been derelict, and I think they owe us a lot more. I don't see how they can end the committee meetings in June and September.

For the record, I would like a record attendance sheet of the people who have attended the meetings.

Mr. MacDonald, if you would give it to me.

Mr. MACDONALD. That is contained in all our hearing reports.

Mrs. DUNN. I would like one. Being the end of my term as chairman of the board, I worked with Mr. Montgomery before, and Joe is from my area.

The CHAIRMAN. The attendance has been good of members on the select committee. A number of times we have had 100 percent, which is very, very unusual in the Congress. I would point out that we began promptly at 9 a.m. in order to give the witnesses ample time to present their views as thoroughly as possible. I am certain that within a very few minutes, more members will join us and we will have our usual good attendance. I would also point out that each member is given a copy of the hearing record so they can review all the testimony before we reach the point that it becomes necessary to write the final report and recommendations. The witness must surely appreciate the enormous constraints on time each member has. We each serve on two other committees and must also serve some 500,000 constituents. It is not always an easy job from the standpoint of time, but we try to the best of our ability.

Mrs. DUNN. I'm aware of that. But I think you have about 2 percent now, and I think that is poor. I'm sorry. It is no way to start a testimony, but I would just like it on the record.

Mr. MOAKLEY. Maureen, if I could interrupt, actually—I have a Rules Committee at 10 o'clock. If this meeting were scheduled at 10 o'clock, I would have to be at the Rules Committee, because that has priority. And I don't know what the other meetings are.

Mrs. DUNN. I think more than two out of nine could show. But that is for the record. Hopefully this is a committee that in years to come you two will view I am sure, as the most humane one you ever served on. As you know, the missing-in-action issue is a very unique one. For all of you a committee to make ultimate final recommendations will be a very big task. You are not dealing with decisions on the environment, oil embargoes, gas tax, foreign affairs, et cetera, but human lives, American lives.

As a committee you have hopefully touched on every side of the issue. The one I will touch on briefly at this time is the title 37, sections 555 and 556 of the U.S. Military Code. I will not go into the official definition of the law as I am aware you have been fully briefed by

DOD and others. My feelings will be strictly as the wife of a military man, who served his country well and hard, and who I feel deserves his just due; which is for his country to serve him in his time of need. This law in layman's terms does not allow this because basically it reads, "A man is dead till proven alive." Personally, I had this brought to light even more so when in February I received notice of the impending review of my husband's case. I was to be allowed "reasonable access" to the information upon which the status review would be based, and for me to remember to bear in mind that I had to give proof that he is alive in order to keep his status the same.

Now, gentlemen, I ask you if I could prove that my husband was alive, would I be sitting here boring you with my testimony? Yet, there it was in black and white for me to read, that I was to give proof that he was alive. I had always read this interpretation into the law. Being just a layman, I assumed at times it was a personal assumption, yet I know now that this is how it reads. How many juries do you know of that sit in on a case where the defendant is already guilty before innocence is mentioned? In other words, gentlemen, and as simply as I know how, I will give you the sentence any military jury under the existing law reading would give the men now in the missing status, "Guilty, dead." Sirs, possibly all of them are dead and maybe none of them will be accounted for, then again, they may be alive and accountable. But, if this law is not reviewed, they could be all condemned to death before even trying. The ultimate hurt to me as a wife of a missing military man had to be when I received the notice of the review of my husband's case and I had to defend him. After going on 9 years I am sick and tired of trying to do the DOD and the Government's job. Why do they not prove his status?

My husband's review case was upheld by the efforts of a very concerned friend of the missing in action, Congressman John Rhodes of Arizona. When he heard of the impending review, he immediately went to work on it as he felt it was premature before the committee's findings were in.

May I also say at this time DOD has never notified me of the cancellation of my husband's review. I found out by a phone call to Mr. Hopper. They never even notified me that my husband was not going to have a review case—and they could not get to me fast enough with a certified letter telling me there was a case.

Now, the irony of all this is for the past 3 years I have applied for a visa to China to obtain information on my husband and never received any answers, except the same old one "that China would not accept it." And lo and behold I have come to find out that my own State Department has never even furthered the inquiry for an application as they felt that I could hurt any secret, hush-hush discussions that were taking place in regard to my husband's case.

Gentlemen, these discussions were so secret and hush-hush nobody ever seemed to know where they were and who was involved. I feel that my State Department was negligent in their duties to me as a citizen by not trying every avenue open to obtain a visa for me, but they were grossly derelict to an American serviceman, and this hurts.

I have always wondered what else the State Department has hidden. In 1968 I went to the State Department to beg them for information on what countries had inquired about my husband. They told me

Britain and possibly Russia. Now, when they left the room, being the nice little lady that I am, I picked up his file, which they said not to. And in it it said, "Pakistani asked about, do not tell Mrs. Dunn," in big black bold print. Now, to you it may be a minor oversight, but when you are drowning in a pool of frustration, it certainly is not.

I also discovered that year that there were four radio and five newspaper reports from the Chinese talking about my husband's shootdown. Again, another good friend of the missing in action, Congressman Jim Burke, from Massachusetts, obtained these for me. Needless to say, I feel the State Department and their mode of doing business needs a revamping, desperately.

Again, back to the law, and the tie-in with proving a man alive. Would you please tell me how I can prove anything if I would only get reasonable access to the information pertaining to the status review in this country and cannot gain entry into the country that has the information, because my government does not feel I would help the case? Gentlemen, if this is confusing to you imagine how I feel thinking I have to appear before a military review board with this dribble. I want to go on record as making a strong recommendation for a review of title 37, sections 555 and 556 to the committee, who in turn, I hope, will make an even stronger recommendation when you complete your committee's findings.

I have appeared in the past 8½ years before the House Armed Services Committee, House Foreign Affairs, the Zablocki committee, Senate Foreign Relations, et cetera, you name it and I have probably touched base with them all. After each testimony, like a nice little lady, I said my thank you's, they reciprocated, some even with a little pat on the head, saying, "You are a brave woman, your husband would be proud of you, the country is proud," blah, blah, and I went home with the same old feeling; aha, I have received another congressional platitude to add to my collection. Gentlemen, I don't plan on doing so with you, because in my heart I feel it, and I am sure you know it, this will be Maureen Dunn's last stand for the constitutional rights of the American servicemen missing in action, to be upheld.

We all know that there will never be another select committee on MIA's; this is it, and we better do the job now. Please don't feel I want to stay in this position forever because the money is good, and I am not apologizing for accepting my husband's paycheck, believe me, I have earned it, doing the job the Government has not done, and I will debate this with anyone. I made a review of General Druen's testimony, which exasperated me so much, I do not have words enough to say it. I can, but I am a lady. I feel any gentleman that would put that into a record, was no gentleman, it had to be the crudest thing I have ever seen the military do. But the only thing I was surprised at, and I would like to know why no one on the committee said to them, "OK, folks, what is the percentage that use these benefits, and what is the percentage that doesn't." I didn't even know of half the benefits, and I am going on a 9-year veteran. So I am really kind of upset that no one on this committee said, "What is the percentage of wives that do use them and don't?" Nobody even asked this.

And believe me, I am sure you are all aware there are people in every category of life. You have them right here in Congress, as you have been going through the scandal for the past month. But I don't condemn all of you for a minority's actions. I feel we have been extremely condemned. You have dossiers on all three of us. I did not ask for any of your credentials or what gave you the right to serve on the committee. I trusted you. And this is why I think that we should have an apology from the Department of Defense for this action. And I feel you as a committee should probably ask them.

The only reason you see this old warhorse still here prodding you is because of the principle of it all. And I feel that we have lost enough principle in this country to last forever. These men deserve it, as do the succeeding men in this position and knowing our history as I'm sure you all do, it is inevitable we will be in another hostility, whether it be hot or cold and I am fighting now for these men. You see one of them could be Joseph Patrick Dunn, Jr., and I want this country to be aware of their responsibilities to him immediately, not years later. You know the only reason I would even consent to my son serving his country is because I believe in it and I have tried to instill in my son the same beliefs and love of country and the Government. This is where you all come into the picture, by helping to right this wrong situation.

When you leave this room for good and all of the findings are in, hopefully you will have given this subject your all. As I stated in the first few paragraphs of my testimony you are on a humane committee, dealing with human lives, American lives. Remember when this is all over with, you will not have been just a select committee picked to give out recommendations on the changing of the gas tax, et cetera, which I realize is important to the American public you serve, but not as important as these men who need to be defended even more so, as they are helpless. I don't envy you your final task, but I do feel I can appeal to you to bear in mind at all times these men will have to live or die with your recommendations. Laying your head down on the pillow at night isn't going to be very easy if you feel you haven't done everything to secure the best possible accounting of our missing men. I am not saying you can play God, I am just asking that you search and research every piece of information obtained by this committee and make sure your findings are those that you could live or die with. Thank you gentlemen for your attention, please feel free to question any of my testimony.

The CHAIRMAN. What I think we will do, Mrs. Dunn, is have the other two witnesses give their statements, which are rather short.

Mrs. Bosiljevac, we would like to hear from you now, and then Mrs. Hart.

STATEMENT OF KAY BOSILJEVAC

Mrs. BOSILJEVAC. Thank you, sir.

Gentlemen, thank you for the opportunity to speak with you today on the matter of title 37, sections 555 and 556 of the United States Code, and other matters more directly of interest to this Select Committee on Missing Persons.

I would be remiss, if I did not reiterate our extreme gratitude to each and every member of this committee who have given of their

time to this humanitarian cause in behalf of the POW's/MIA's who remain unaccounted for.

You have previously heard some discussion of the litigation involved with this statute. I will speak to the actions taken in response to the overwhelming majority vote at our League of Families Convention in 1974. The vote was to seek to stop the use of PFOD's—presumptive findings of death—through action in Congress, for the purpose of focusing attention back to the unfinished business of POW/MIA. And further to prod Congress to assist us in gaining an accounting. The rights of the men had no bearing in the process of PFOD, so we sought a halt in the absence of (1) an accounting, and (2) evidence. From this decision the Wilson/Bennett and the Senate version, the Thurmond, were spawned. They were made deliberately forceful to emphasize the problem of the men and their plight. How else to gain attention to a problem everyone thought had been successfully resolved?

Further pieces of legislation were presented to accommodate the request of some families that at a minimum our Government would make an all-out effort toward an accounting. Very broad bipartisan support from Congress was a clear reflection that someone cared. At a time when the issue of the remaining men was no longer a priority item, but closer to a dirty word in the administrative branch.

At the time when we worked on this legislation, it was not unusual to be confronted with Members of Congress and staffers alike who had been told that we were seeking only endless military pay and not an accounting of our husbands. We had been told that DOD lobbyists and liaisons had so informed them. In May 1974 "unnamed Pentagon and congressional sources" provided AP and UPI with information that some families knew their men were dead and were more interested in keeping the payments than learning the fate of their men. We strongly retorted that we would give back our husband's full pay and allowances if money was the problem—This seems to fit into what was referred to as "the party line" in the Martin case—This party line was referred to in my own case, that is, my Senator, Roman Hruska's office was visited by two DOD representatives with a dossier on me. Later a meeting with then Vice President Gerald Ford was nearly scuttled by DOD efforts to personally discredit me.

I am confident that you are able to see through this type of smoke-screen tactics of keeping you away from the actual information on the men. In our own personal family case, the pay of a USAF captain, and it was a surprise to me, Mr. Chairman, when you announced that my husband is a major; I don't know it, I don't think that is true.

The CHAIRMAN. I didn't say he was a major. I simply said I thought he had been promoted without first checking with you or the Air Force. It was a supposition on my part that evidently was in error. I apologize. I am not sure I had Mrs. Dunn's husband—

Mrs. DUNN. He is a lieutenant commander.

Mrs. BOSILJEVAC. His rank is U.S. Air Force captain. The pay of U.S. Air Force captain is a matter of public record, as are all the benefits given to the families.

What is not public is how much of it I have chosen to devote to the work of fitting together the missing pieces of his case. I am in no way unique. We have no large amount in USSDP accounts.

We are very grateful to the services and to Congress for the benefits provided to us by statute. I would remark to you that after reflecting and agonizing about General Druen's testimony a couple of weeks ago, that again the pure economics are not the major factor involved here, since I am sure that this is considered sworn testimony. I'll tell you a small personal secret. Until the general testified, and I researched it with my base casualty officer Saturday afternoon, I did not realize the extent of benefits supposedly available to me. I would suggest to you that most of the benefits outlined are not used on any wide basis by the remaining POW/MIA families.

You are just beginning to touch the tip of the iceberg, that is, the valuable information about the men who are POW/MIA/BNR in Southeast Asia. Your timespan is growing very short and I feel that you have been handed very valuable information about the known fact that many of our servicemen were sighted in captivity beyond the 1973 repatriation. Unfortunately these revelations are coming late in the game. There are a number of things you could do with the balance of your committee existence.

The DOD has told you that they have withheld information from the families based on it being "uncorrelated and unsubstantiated data." And that it would be better for the families if you relieve them of this burden by not going any further and proceeding in accordance with the law.

I would submit to you gentlemen that this is more cruel than truth.

The argument was used at a recent White House meeting that it is impossible to tell a family the harsh reality of what has happened. Bunk. The families know, in some cases, more than they should about their case.

If we couldn't take the answer, we wouldn't ask the question. I'm going to make a reference here to my own husband's case, or rather at Randolph AFB, what is called his case. The PFOD decision was already made on September 24, 1973, less than 2½ months after General McNeil said he would not recommend PFOD in this case "unless I receive guidance from above," and I don't believe he meant God. In addition, this was less than 1 year and 1 day after the shootdown. The confirmation of this became available to me in July 1975, when the document was finally entered into the NOK viewable record. I can prove without a doubt that information was not entered into the viewable record until in each instance I was able to prove that it existed—in other words, the burden again is on me—and could be produced or downgraded.

Example: FIBIS Report of Capture. (2) Report of Ground Communication with my husband.

I do not wish to depict these people at Air Force Casualty as monsters without feeling—but rather instruments of policy that does not reflect the best traditions of the U.S. military and this country. Duty—honor—country.

I did not ask to be an MIA wife, further, I do not wish to be a professional MIA wife, to leave our children and travel seeking information that should be made available to me, through the DOD, for the most obvious reasons.

I wonder at this attitude that I find—the communists know the truth. The intelligence people know the truth and Dr. Shields has mentioned that he knows the truth, and it is too harsh for us.

I would submit to you that it is stupid as a country to lie to ourselves about this issue. Thank you, gentlemen.

The CHAIRMAN. Thank you.

Mrs. Hart.

STATEMENT OF ANNE M. HART

Mrs. HART. Yes. Thank you.

I would like for you to be aware that I grew up in the military, in the Air Force, and married directly into it. It is all I have ever known. I have very strong feelings for the military and very strong loyalties. I can appreciate their position. But unfortunately, I feel something must be done about this law.

The task of getting information and trying to obtain an accounting is difficult, particularly when you must rely on cooperation from Hanoi, Laos, and Cambodia. But the review of chapter X, title 37, section 555 and 556, United State Code, does not rely on the cooperation of any other country. You have the power to recommend a review of this law.

I think it is pretty obvious—when a small group of families can prevent the U.S. military services from acting under a law that exists, there must be something wrong with the law.

My feelings are very simple. It is not just. When one body, the military, is allowed to act as witness, jury, and judge, I have to question the fairness of the procedure.

Even persons charged with the most heinous crimes are provided more protection than this regulation provides our men. You must see why we fight against this practice.

The entire POW/MIA situation has bred doubt and distrust. The knowledge that the Air Force regulations instruct the reviewing officer not to consider classified material, makes it impossible to accept the findings credible.

This committee heard the testimony of Lt. Gen. Vernon A. Walters, USA Deputy Director, CIA, on March 17, 1976. In his statement General Walters cited the report of a Lao cadre who rallied to the non-Communist government. According to the cadre, he witnessed the downing of a USAF AC-130 on December 21, 1972, and supervised the burial of remains. General Walters states that this is considered a credible report.

My husband was aboard that aircraft. In the information sent to us, this cadre was camped near the crash site but because of the heat from fire no one was able to get close to the aircraft. According to the report we were given, it was another Pathet Lao force that went to the crash site the following day and supervised the burial of five or six individuals. Was this rallier actually at the scene, or is his information second hand?

If the information is factual, then the status of at least five or six of the men involved in this incident could be positively established.

What has this committee done to find out how much of an effort has been made to establish a provision with Laos to allow the recovery of these remains if in fact they do exist? Why is the information supplied

by a Pathet Lao rallier considered the credible report and that of a high ranking Pathet Lao official discounted?

More importantly, why should people who serve in the Armed Forces and their families be expected to accept a lower standard of justice for themselves than any other citizen in the United States?

If you allow this opportunity to recommend that this law be reviewed by an unbiased body to go by, another group, possibly a group which will include the sons and daughters of these same men, is going to suffer through this same ordeal.

I cannot believe that you could hear the evidence from witnesses like Karen Martin and others; could come face to face with the situation and not recognize the necessity for a review of the law.

If nothing else, it would establish a little bit of faith on the part of the families that you are willing to test this law. If it is good, we will have to accept it. If not, maybe military personnel will get something a little better.

I would like to touch on the money situation, because I find it humorous, almost. It makes everyone else angry. I think it is pretty funny, in a sad way, that we have reached the point of fighting over money.

Frankly, if I had had any idea of how much I would be worth, I might have jumped in there and had them change my husband's status, because I will certainly be worth a great deal more when his status is changed. Now, if they choose to reveal records and facts and figures that make us look like a bunch of vultures, that is their business. But in all honesty, sirs, I certainly had no idea that the benefits available to MIA families were so substantial. When I put them together with my husband's life insurance, I could invest them and sit on my tail for the rest of my life in relative luxury.

I would ask you, please, recommend that an unbiased body, a legal body, review this law. Let it stand the test. If it is just, it will stand.

Thank you.

The CHAIRMAN. Thank you, Mrs. Hart.

Mrs. Dunn, because you brought this up, I would like to mention that we have 7 out of the 10 members here, which is far above the average.

Mrs. DUNN. I know, and I appreciate it. I wrote them all down at the time they came in. I appreciate it.

Mr. LLOYD. Mr. Chairman—I would like to point out to you—I didn't know you were taking the names down and putting the time down. Just so you know, this is my second meeting of the day. And at 10 o'clock I have another meeting of the day. I left a California delegation meeting, which, of course, is important to me, because I happen to be from the State of California, to come here. And we make a tremendous effort, at least I do, and I think that is true of the rest of this group.

The CHAIRMAN. Thank you, Mr. Lloyd. If there are no objections, may we operate under the 5-minute rule? The members do have other committees and constituents and obligations.

Mr. Moakley.

Mr. MOAKLEY. Well, actually the testimony itself has been very interesting. I have talked with Maureen off the record on this thing, and I know what her feelings are. I really don't have any questions. I

am going to have lunch with Mrs. Dunn, and I am sure I will get all the answers I want.

I would like to have a copy of Mrs. Bosiljevac's testimony.

Mrs. BOSILJEVAC. Certainly. The reason I didn't have a copy is because this past weekend, Memorial Day weekend, I had a broken typewriter, and I spent my time with the children, which I felt was more important.

Mr. MOAKLEY. I would like to have a copy for my files. Thank you. I have no questions.

One thing: We don't have any dossiers on you women.

Mrs. DUNN. You had to have something to know who we were. If you haven't, it is the first committee I have appeared before that has not.

Mr. MOAKLEY. I just asked Angus. All we know is superficially who you are and what you are about, and why you are here. I don't have any—

The CHAIRMAN. As a matter of edification for our witnesses I would point out that it is a longstanding practice of all congressional committees to properly identify witnesses for the purpose of establishing their so-called expertise on the subject on which they are testifying. Each committee simply includes in the hearing record pertinent information on the background and experience each witness has had in the subject under study. This biographical data, if you will, simply establishes you as a credible witness and one who can speak with authority on a particular matter. In no way do we have dossiers on witnesses, especially within the meanings and connotation that have become attached to this word within the last few years.

Mrs. DUNN. Then I am wrong, and I apologize, because any prior committee I have appeared at, they have had a complete dossier.

Mrs. BOSILJEVAC. Could I mention something? In our case, just the misinformation you were given as chairman, that my husband was a major—

The CHAIRMAN. As I stated a few minutes ago, that wasn't anybody but me. That was a supposition on my part. I was not given any misinformation.

Mrs. BOSILJEVAC. I am an MIA wife. I don't work for anybody, except my husband.

The CHAIRMAN. I didn't say you did.

Mr. Lloyd.

Mr. LLOYD. Thank you, Mr. Chairman.

One of the things Mrs. Hart said that I don't fully understand, and again probably because we did not have a dossier or something is what law you are talking about.

Mrs. HART. I am talking about the regulation that the military services use to change a man's status from missing in action to a presumptive finding of death.

Mr. LLOYD. I'm sorry. I didn't understand that.

You people have come in here, and of course this is a very difficult thing for us on the committee. We have heard a great deal of testimony. And I gather from what you said, Mrs. Dunn, that you feel that the committee ought to continue beyond the September date.

Mrs. DUNN. Are you asking me?

Mr. LLOYD. Yes.

I want to get your thoughts on the record.

Mrs. DUNN. My feeling is that I feel that you all have to review it yourself. You think you have had enough time?

Mr. LLOYD. My question to you is do you want the committee to continue beyond September?

Mrs. DUNN. I feel myself I would go on record as saying I think you should continue this committee just as if it was your son sitting there and until you had answered every question.

Mr. LLOYD. Mrs. Hart, and Mrs. Bosiljevac.

Mrs. BOSILJEVAC. I have some feelings on this, yes. I feel that, as I mentioned in my testimony, you have just begun to touch the tip of the iceberg. The Defense Department has told you things about sightings of live Americans. And until you resolve who these people are, and do the best job you can on a possible accounting, you just cannot fold up. Because this is much, much, much too important.

Mr. LLOYD. Well, in that light, and continuing on—

Mrs. BOSILJEVAC. I don't know, sir. If I knew how long it would take—I'm asking you for your maximum effort, only the best that you can give.

Mr. LLOYD. Well, I had asked this question before of another lady who appeared before us. And my question to her was—at what point do we say that is enough, then. And I agree with you, for you to say, well, you can go for 9 months or 1 year or 5 years—

Mrs. BOSILJEVAC. If it was my husband sitting there, alive someplace—if it were, hypothetically—whoever these people who were sighted, I certainly would feel strongly that someone should press until he—

Mr. LLOYD. I understand and accept that, that someone should. The question we are asking is—Mrs. Dunn had indicated in her testimony that this was the last vestige of governmental involvement. Do you believe that to be true?

Mrs. BOSILJEVAC. I think it is.

Mr. LLOYD. OK. With that in mind, then, and I am not passing judgment whether you are correct or incorrect—and my personal opinion is that you are overestimating our abilities—but with that in mind, do you know what kind of a time frame you would recommend? The Congress started out and set a time frame. They said a year. The year is up. And now we have to go back to our colleagues. If we say we are going to continue, we have to say to them, we will continue at a cost of "x" number of dollars, and at a cost of a certain amount of time, and so on and so forth. And then we have, in addition to that, to say, "And what we hope to accomplish by the continuation of this committee is as follows:"—and that is over and above what the goals were—the obvious goals—the total accountability of every person.

We would like to have done it in a year. I think we have to accept the fact at this point we are not going to achieve that.

Mrs. BOSILJEVAC. If you are not going to achieve that, and if you are just now beginning to get the information, right at the 11th hour, then how can you possibly—if you know that there is additional information, millions of documents—

Mr. LLOYD. I don't know that we are at the 11th hour.

Mrs. BOSILJEVAC. I hope you are not, sir. But we do feel, the families do feel that when you are given a 1-year time limit to this, which is, granted, very, very short, and you only get—

Mr. LLOYD. Let me add something else.

This is really a bringing together, a collating, if you will, of the involvement in the MIA/POW situation. But that has been going on—I'm sorry—what are the number of years that has been in existence?

Mr. MACDONALD. The United States Code? Since 1942, sir.

Mr. LLOYD. In other words, what I am saying to you is, although it has nothing to do with you, it is an ongoing process for those of us who were in World War II, and then Korea, and now the Vietnam situation.

Mrs. BOSILJEVAC. What I am saying is this particular law and its supplemental regulations are totally inadequate to this particular situation, and at a minimum this committee could recommend that this be reviewed.

Mr. LLOYD. I accept that.

Mrs. BOSILJEVAC. I do not know what time span I can recommend to you.

Mr. LLOYD. What I am looking for is what you have just spoken to. And maybe there is no real recommendation.

Mrs. BOSILJEVAC. There is no way to measure the cost involved as opposed to what you are going to gain. There is nothing really to be gained other than peace of mind. And you cannot put a price on peace.

Mr. LLOYD. But you have to, unfortunately. Let me explain something to you. And I do not want to come through as either callous or crass. I spent a goodly number of my years in the military, as I have already indicated to other people. And I have friends who are missing. And I have also a lot of friends who just simply did not come back with me out of World War II, and in Korea and elsewhere. But the point that I make on the whole thing is somewhere along the line the American public says to us, in very loud terms, "You will bring things to a halt." They want accountability on money. They really do. And the trade-offs are, as far as this committee is concerned, that we have to account to the American public, and to our colleagues, who in reality are the American public, because each of them represents a half million people. And as such, I am trying to determine how far we ought to go. Assuming that I am willing to go beyond September, how far do I go before I say you are right—

Mrs. BOSILJEVAC. Sir—as Maureen mentioned, it is going to be a matter of conscience. It is going to be a matter for each individual member to decide that.

But I am just saying, I don't think the American people have come to you with anything more than an outcry from our districts, our areas, for us, for help, in resolving this issue correctly.

Mr. LLOYD. OK. In the resolution of this, do you feel that perhaps a resolution—and I am not asking these questions in any way to put you down personally—all I am trying to do is trying to get things into the record, and solidify my own points of view. Do you feel that perhaps your perceptions of a solution are different than those of, say, John Q. Public, who does not have the emotional involvement that you do?

Mrs. BOSILJEVAC. I would have to say, of course, my perception is different, as a wife of a missing person it naturally would be different. For anyone to assume that it would not, would be—what I am saying is I think you as a committee member, to adequately be responsible

to these men, you would have to assume almost the identity, as if it were your son, and try just that hard. That is what we are asking you to do, to try that hard.

The CHAIRMAN. Mr. Harkin. Thank you, Mr. Lloyd.

Mr. HARKIN. Thank you.

Mrs. Dunn, could I ask a question of Mr. Lloyd?

The CHAIRMAN. Not at this time. We must proceed under the 5-minute rule in order to be fair to all eight members present and give each of them an opportunity to ask questions.

Mr. HARKIN. Thank you, Mr. Chairman.

I keep hearing from a lot of witnesses about all this pay and the benefits dependents receive.

I wonder if one of you could enlighten me as to exactly what those are. I would like to ask Mrs. Bosiljevac that since she brought it up. Can you tell us, if you would, what kind of pay and benefits you have received, and what you are receiving now.

Mrs. BOSILJEVAC. OK.

My husband is paid his paycheck, which is a matter of public record.

Mr. HARKIN. And you get that?

Mrs. BOSILJEVAC. No. Well, I get an allotment of his pay, which he allotted to me, and then a portion of it is put into the USSDP accounts, which in our case is very small, because I have chosen to use his pay to work for him. In other words, that was my choice. And I think it was a good choice. Okay.

I didn't know, until Saturday afternoon, about some of the other benefits that accrue—I don't even know whether that is the proper word—that are available to us, if our husbands are declared PFOD.

We are allowed, according to the general—I recall seeing the things as I remember them in order—we are allowed to live in military housing, which is not without cost. And we were told—the only thing I was ever told about that kind of thing was we could live at Sheppard Air Force Base if we wanted to, in excess housing. I can live at Offutt Air Force Base, it is not free. They take the housing allowance back out of the paycheck, and you are paying, you know, what would be the equivalent of a rent. In other words, you are renting a house.

Mr. HARKIN. Your husband continues to get paid but you don't get the paycheck?

Mrs. BOSILJEVAC. In our case, my husband is paid, and my husband, when he went overseas, said, "I allot this portion of my paycheck to my wife and children for them to be taken care of," which I think was just and proper. In our case, when Mike was shot down in 1972, I chose to decide at that point, since I could see that there were gross problems in the record, that things were not showing up in the record as they should, and that there was something funny about what was going on, I chose to start to work and find out what happened to the missing pieces of his record, using portions of his—

Mr. HARKIN. That was set aside?

Mrs. BOSILJEVAC. What it is—say for instance if a guy gets—I don't even know how much it is, actually, I don't have it with me—the information—the amount of money that we are given, the man says, okay, if he is married, generally he would allot money to his family to live on. And then I have taken that money, paid the house payment,

the car payment, paid our bills, and worked on the issue of trying to resolve this problem.

Mr. HARKIN. Then there is a certain part of it set aside?

Mrs. BOSILJEVAC. There is a certain part of it—10 percent by law.

Mr. HARKIN. Ten percent of his paycheck is set aside.

Mrs. BOSILJEVAC. In the USSDP.

Mrs. DUNN. It can be what ever you want. He asked you if you collected his paycheck. Yes; we do collect the paycheck. That is it.

Mrs. BOSILJEVAC. I want to explain further.

Mr. HARKIN. You collect the paychecks. I am just wondering—

Mrs. BOSILJEVAC. I have offered repeatedly, when we were accused of this kind of thing, to give the paycheck back. In fact, we wrote checks—

Mr. HARKIN. What do you mean by that?

Mrs. BOSILJEVAC. If I could give the paycheck back, which by law it is paid to my husband, I would give it back.

Mr. HARKIN. I am just trying to figure out what the benefits are. That is all I am asking.

Mrs. BOSILJEVAC. I get—myself and the kids, we live on my husband's pay and allowances.

Mr. HARKIN. How much is that a month?

Mrs. BOSILJEVAC. Well, it is a matter of public record. I am not even sure, sir, because I don't sit and count the money every time it comes in.

Mr. HARKIN. I'm just trying to find out.

Mr. GUYER. I don't think it is really proper to inquire into personal finances.

Mrs. BOSILJEVAC. I will be happy to give a disclosure.

Mr. GUYER. I think what we are trying to establish is that one wife may have had a terminal settlement in which her husband was pronounced killed in action, and that involved so many dollars. The others have not yet been resolved and get so much per month. I think that is a personal matter as to how much they receive. But there are two principles involved. And I think that is what we are talking about.

Mrs. BOSILJEVAC. What we have said is that we have made the offer, and nobody has ever taken us up on it.

Mrs. DUNN. He just wants to know what your benefits are. We do get the man's paycheck, as if he was on active duty, which again, as I stated in my testimony, I am not debating with you or anybody whether I earned it or not. We receive his allotment. The other benefits, which I was not even aware of until I read this testimony—I'm a 13-year military wife, my husband was 9 years in this position, and I didn't know I was entitled to base housing, which inevitably I think each wife probably stayed just for the year, because you don't want to be around the military, it hurts you. So you get out. I do know people that have stayed there. And in their capacity, they have paid \$300 a month. I don't think that is cheap. They are paying rent. Okay. That comes out of the base housing. And then—you are eligible, if you want—and they did this this time, in this war, or travel assistance, which means Kay will come up here from Nebraska and to save the committee money she took an Air Force ride. If her husband is declared dead, she cannot take that. But that was a special act of Con-

gress for us, saying they felt if we could say that we did it for humanitarian purposes, take it. I have never used it in 9 years, because I have never had to.

Mrs. BOSILJEVAC. May I comment on that? I was told that only three wives really used that.

Mrs. DUNN. Throughout the years—we have got a decade of wives doing it off and on. But basically we are not getting any freebies. I don't even shop at the base commissary. I don't go to the exchange, because the prices are coexhorbitant. I am not getting any freebies. I don't know who is. But I never have taken the time to find out. And my husband has been missing almost 9 years, and 3 years ago I just found out what I would be worth in social security and VA, because why I did it, I did a study with another wife that was in Kay's position, a 1972 shoot down, a captain. The bank would not allot her any loan until she could come through with the workup on social security and veterans benefits, in order to make sure if her husband is declared dead, she can pay it. That is when they did a similar one on my husband. Other than that, I don't know—

The CHAIRMAN. We will come back to you.

Mr. McCloskey.

Mr. McCLOSKEY. Thank you, Mr. Chairman.

Mrs. Hart, in your testimony you said you felt the law was not just. I have a copy of the law here in front of me, which was enacted in 1942. The law provides merely that the Secretary of Defense has the right, after a period of time, to try to reach his best judgment. You have stated in your judgment the Defense Department shouldn't be the judge, jury, and witness. And that is a principle of our law, that we question when an administrative body makes the sole determination without judicial review. But in a case that an attorney named Foley won, in the courts in New York, the court did impose rules of reason which seemed to give the due process, which would require that you be given the full access to all the information.

Now, running through the testimony of all three of you, there has been a rather strong hostility to the Defense Department, I would say. Is that a fair appraisal?

Mrs. HARR. I can only speak for myself. No; I am not hostile to them. I can appreciate their position.

Mr. McCLOSKEY. Let me state my problem.

I questioned the Vietnam war for many years, and whether or not the Defense Department was telling the truth about it. They subsequently admitted they were not telling the truth. But their motivation for not telling the truth was either because of intelligence reasons, or because they did not want to reveal they were bombing in Cambodia, or that they were responding to nonexistent antiaircraft fire. They had reasons to either save men's lives or to preserve what they deemed essential secrecy in the conduct of the war. I cannot find any motivation at the present time for the Defense Department to withhold any evidence from any of the relatives. Can you give me some clue as to why you feel that they are practicing deceit today?

Mrs. HART. First of all, may I say, I would like to respond to that. I cannot accuse them of practicing deceit in any way, shape, or form. I simply said the Air Force regulation instructs the reviewing officers not to—

Mr. McCloskey. With your Air Force background, you can understand that. The reviewing officer, they don't want him to know the source of an intelligence report in Laos, because it may jeopardize the intelligence report.

Mrs. Hart. But not to consider the information—period. It doesn't say not to consider the source.

Mr. McCloskey. Let me ask the staff on that. Do we have any evidence that the Air Force officers are instructed not to review classified material?

Mrs. Hart. It is in the written regulation.

Mr. MacDonald. Yes, sir. The Department of the Air Force and Department of the Army in their instruction for case reviews state that classified information cannot be shown to the next of kin, nor can it be used in the case review.

Mr. McCloskey. Why can't it be used in the case review?

Mr. MacDonald. Well, sir, that has caused a lot of confusion. What this really means is if a classified document such as, say, an intercept report, or an agent report, in which the source of the information is very sensitive, that document, confidential or secret, cannot be used, cannot be shown by law to someone not cleared, and it cannot be used in a case review. However, that document is extracted in totality, except for the identification of the source, and is inserted in unclassified form in the files. And with the possibility of one or two errors, each unclassified case should have in it all of the intelligence information pertaining to the individual, including total extracts from classified documents. It is only the document itself, with the identity of source, that cannot be used.

Mr. Gilman. Will the gentleman yield?

Mr. McCloskey. Certainly.

Mr. Gilman. We have had a number of questions that have now arisen, as you know, Mr. MacDonald, with regard to the abstract being in the files.

Are you finding in your search of these files that all of the abstracts of the classified material are in the files that you have examined?

We have had another case this morning here, I see, in reading the testimony of Mrs. Hart, that she was not supplied with some of the information, classified information. I had a report last night from someone that learned for the first time in reading our volume No. 3 of our report that there was a CIA file with some information that they were not aware of. Now, we have had other reports. I would like us to try to establish whether or not the families are getting all of the basic information that is available to the agencies.

Mr. MacDonald. They should be, sir. In most cases I think they are. I would expect—and I would like the name of the case if I may have it to check it out.

Mr. Gilman. I will supply that after the hearing.

Mr. MacDonald. Last week Dr. Dittberner and Dr. Kenny went to DIA without prior notice and brought six or seven cases each. They brought the unclassified personnel file from all of the services. They were then shown the corresponding Defense Intelligence Agency file. They reviewed them in detail. And in no case did they find that any substantive classified information relating to the individual that was in the DIA file—in every case it was also in the personnel file. So

that in their view, in each case, the totality of the information was available in unclassified form.

The CHAIRMAN. Will the gentleman yield to me.

Since we have 8 of the 10 members present, I would like to point out that we have arranged for each committee member to go individually at his or her convenience to the Department of Defense to look at any MIA file they desire. This is being arranged for next week, and I hope each member will avail themselves of this opportunity.

Any time you would prefer, we will set it up. You may look at any file that you would like. We will set the times up at your request so individual members can study these files and make up their own minds about the classification.

Also, the White House has notified the Defense Department, Mr. Rumsfeld, that they want all the information on the missing in action declassified. This was the work of Colonel Hopper meeting with several members of the White House staff. I have talked to Mr. Rumsfeld personally, last week, or the week before, and he assured me that the information would be declassified. However, there are certain situations where it may not be possible to reveal the actual intelligence source because we would place the individual in grave danger. We have an obligation not to release these names.

Also, if we have intelligence codes in the files and declassify them, there is a possibility that our coding system could be broken. But other than that, I have the impression that all pertinent information is going to be available.

Mrs. Hart. Mr. Montgomery—

Mr. McCloskey. That's the question I wanted to ask you, Mrs. Hart. At this stage—granted that the Defense Department has wanted to keep everything classified—in 1976, it is hard to conceive that even names of people in 1967 or 1970 would be necessarily classified, unless they were native people still in those countries.

But they have told us that they are willing to give us all classified information now. And the court has ordered them that any information available to the Government be available to the families in any determination of fact of death.

Now, what in addition in your judgment do you feel we should insist on to make this law fairly administered? I don't find anything wrong with the law.

This practice you have mentioned of the man not seeing the classified information, I think with a single exception of possibly the source of intelligence or the cryptographic material, there is no reason to keep any of it out of the file. But is there anything else you feel this committee should insist on?

Mrs. Hart. First of all, for the record, may I say, Mr. Gilman, I did not say that in my own particular instance, that the military had withheld classified material from me. To my knowledge, they told me everything for the most part about my husband's particular incident. All I said was the information given to us, and the testimony given by General Walter, did not agree. For your question, sir, it seems to me whether a man is a member of the Air Force, Army, Navy, Marines, should make no difference. The criteria should be the same. There should be some time reference. I am not an attorney. I cannot recommend to you how the law should read. I think Mr. Tolson covered it fully.

Mr. McCloskey. Where is it unjust? In what area do you feel it is unjust as now practiced?

These determinations have been held up pending this committee's final recommendation. As I understand it, the procedural problems of the old situation where people were not called unless they were in certain categories and they did not get return-receipt registered mail, and others, they did not get access to all of the information, those things have been cured.

Mrs. DUNN. I am sorry, in my review—and I have letters right here, you have the right to reasonable access. You know as a former Marine, and I know as a Navy wife, reasonable access does not mean all of them. So it has not been changed.

My husband's review is going to be in February.

Mr. McCloskey. Next February?

Mrs. DUNN. This February of 1976 it was going to be, it was canceled. Only reasonable access to his file is what I was going to have.

Mr. McCloskey. I think we would have to probably leave to the court to determine such in camera, the same they did with President Nixon and the Watergate documents, that the court would have to decide if certain documents were so sensitive they should not be revealed. But if they held any document back from you, then I think the determination of the presumption of death would be invalid.

I just cannot imagine anything except source of information and cryptographic material which would be withheld. I think that probably is the context in which it would be.

Mrs. DUNN. But after almost 9 years, what could be classified?

Mr. McCloskey. Let's go beyond that. Aside from the source of intelligence, of the cryptographic sources, has anything been withheld in your judgment from your files?

Mrs. DUNN. I mean proof of the example is as I stated—you were not here earlier—I did not even know about four or five radio and newspaper reports about my husband's shootdown until 1969 when my Congressman got them. I did not see them in the files until a year ago. I still have not had testimony from the pilot who was the lead pilot that my husband's plane, when he was flying wing—they don't even have testimony from this fellow in his records. Now that is ridiculous. This is the man that they held him accountable for, that my husband was missing. "I saw him in full chute," why isn't this kind of stuff in the record?

Mr. McCloskey. Certainly if the finding is going to be made, if the presumption is going to be made, you are entitled to that. Your attorney can certainly bring that out.

Mrs. DUNN. My attorney, we had full evidence of doing this, but of course the review was upheld, because his status was supposed to be reviewed in February and possibly an extension to April. The Navy was being very kind to me, because I had some extenuating circumstances that I could not do it until April. Then a few phone calls were made. I referred to Congressman Rhodes; also, I know Mr. Montgomery made some overtures too. That made them stop it.

Mr. McCloskey. Wait a minute. We are talking about a past procedure?

Mrs. DUNN. Right.

Mr. McCloskey. That New York court decision forced them to

Mrs. BOSILJEVAC. No; it didn't.

Mr. McCloskey. Do you have a feeling about this?

Mrs. BOSILJEVAC. Yes; I do. It really didn't force them to change the proceedings. All it did was say, you can send them a letter, let them come. The burden is still on us, totally on us.

Mr. McCloskey. I do not view the law that way.

Mrs. BOSILJEVAC. It is, sir.

Mr. McCloskey. I think the law is that the Secretary must make the determination based on all of the facts available to him.

Mrs. BOSILJEVAC. The regulation that supplements it says the Service Secretary or any designee may not review the classified information when making a status determination.

Mr. McCloskey. That has been changed, I know.

Mrs. BOSILJEVAC. No; it has not. Take a look at that Air Force regulation. It has not been changed.

Mr. McCloskey. Their testimony before us has been that they have access to all of the classified data.

Mrs. BOSILJEVAC. I am sure they have access, but whether it is used or not is another problem.

Mr. McCloskey. Everything they have access to is not available to you?

Mrs. BOSILJEVAC. No, sir; it is not.

Mr. McCloskey. Well, it will be if you have one of these determinations coming up.

Mrs. BOSILJEVAC. I doubt it will be.

Mr. McCloskey. In the past they have been up before this committee and they have laid out and said that all information available to them will be made available to you by court order.

Mrs. BOSILJEVAC. We are not hostile to the Defense Department. We are grateful in a lot of ways to them. We are military wives. What we are trying to say is that in this case, this regulation—and I know best the Air Force regulation—in the situation that we have found, in my husband's case, the report of capture was not even put into the downgraded record. Why?

The CHAIRMAN. Mr. Guyer?

Mr. GUYER. Thank you, Mr. Chairman.

I am enormously interested in the testimony. I am sorry I was a little bit late. I was here until 9 o'clock last night and we had some meetings scheduled earlier this morning, which came in conflict. That is what we are here for. But it is a little bit pathetic in a way that the very people who are trying to help, find themselves in diatribes with us and others. Your husband served the same country we are trying to serve, in a different way. We should be partners instead of adversaries.

I do not mean to imply that we are counterproductive here one-on-one; we are not. But the committee itself, I think, at least is working when no other congressional committee was addressing itself to the job.

Mrs. BOSILJEVAC. Yes.

Mr. GUYER. The saddest finale of our committee would be not to have accomplished the role that you people look to us to fulfill. I have to say in behalf of the chairman that he has gone all out, in fact he has called so many meetings that he has discommoded some others. I know we

Some of us were interested in this before we got to Congress. So ours is not just a sudden effort, just because we were assigned to a committee. I think one of the discouraging things is, we sometimes do not know where to go or what to do next.

I came to Congress as a freshman feeling that we are supposed to serve people. On my staff we have four people who make home calls. We send people into their homes, when they have a military case, a social security case, a missing persons case, or any situation of a personal problem. I would have hoped that someplace in 7, 8, 9, 10 years there would have been a complete thorough case work study made with each one of you to the point where you could make a determination in your own mind after reviewing every available access of information.

That apparently has not even been accomplished. But it serves no good purpose here to say the Defense Department has not cooperated, or the Army or the Air Force. Some of them, I think, have handcuffs on in certain ways and have not been able to go all the way. But we need to know, so we do not have to go to the TV and radio media and find ourselves giving counterproductive testimony, which is the worst thing that could happen.

For someone to say "They did nothing, just like we thought," is heartbreaking to everyone. I share your views that we can never understand another person's burden until we walk in their shoes. We can never understand what you have gone through here. Statistics never take the place of comfort and true knowledge.

I can read statistics. In World War II there were more than 70,000 never found; in Korea, over 7,400; ours is down to 1,100 known dead, nearly 800 not accounted for, which statistically is a great thing but does not help the one with a hole in their heart. We understand that.

From our little conversations, maybe we need more testimony from you people instead of just from the experts. I would like to know whether or not we have met frequently enough. Have we met frequently enough in your judgment to be fulfilling our role as committee people?

Mrs. DUNN. Are you asking me?

Mr. GUYER. I am asking all of you.

Mrs. DUNN. I feel some of the testimony that has been given is garbage, a waste of time. I am sorry to have to say that.

Mr. GUYER. I mean as far as the committee.

Mrs. DUNN. I think some of the people you have had to listen to is, you know, redundant, repetitive, it has wasted your time.

Mr. GUYER. We would like to know what options we have yet to exercise that we have not explored. If you have information, for example in your own personal case, I would be happy to sit down as I will with my Ohio people, one at a time, until they have either exhausted all information and say, "Look, I am convinced you have gone all out and this is it." We cannot be Solomons, but we can at least be carriers of messages. We can be arbiters in that sense.

It is unfortunate we do not have the authority. We never did have.

Mrs. DUNN. You are a fact-finding committee.

By the way, I want to apologize, it is real nice, all of you are here. I am never one to say I don't apologize for my mistakes. I am apologizing that I kind of labeled you all as latecomers.

Joe is coming around, you know. I have met Mr. McCloskey a couple of times. probably once he wants to forget. Anyway, I really appreci-

ate you all being here. I can feel—you know you get gut feelings about things and I can feel a little bit more gut feeling that you really are far more into it than you were in September, the personal end of it.

I think this is good in one instance, that you are getting a personal aspect at the tail end. Someone said, "Why didn't you testify earlier?" I said, "Because I think what they are going to hear from September to now, they are not going to remember. They are going to remember the last part."

It is very hard. I want to counteract one thing, Mr. Lloyd said. "How long do you feel this committee should go on?"

The thing is, I am not here today to tell you how long or make any recommendations how long you should go on, forever and ever, no. But I do feel, I am here today to make a recommendation that this be reviewed, and also to just kind of prod you and be a little ghost sitting on your shoulders; you have an angel saying, "Please, please, when you are through here, think of everything you have come through, because you are dealing with human lives."

This is my feeling as a wife.

Mr. GUYER. Do you feel there are some wives or mothers now who have had more information than we have in our file and are not convinced that we have gone as far as they have gone?

Mrs. DUNN. I don't know any personally, truthfully, I don't.

Mr. GUYER. When we have heard reports that pictures were seen and radio talks heard in evidence and reports from those with them who testified, we have not been able to find very much of that in our committee hearings of anybody who said, "Well, I heard his voice, I knew he was alive when I left him," very little of that.

We would like to know, such as the case of one very prominent in Ohio, Craig Paul, for example. His picture was displayed on posters asking, "Where is Craig Paul? Only Hanoi knows."

I do not mean to use that family as an example. I happen to know Sandy well enough. We would like to go all out. So we have reached that point where only God knows. If only God knows, He will tell us.

We would hope the committee would be partners in that venture, because we will never accomplish it unless we cooperate. We had a luncheon when the youth came back from a trip and I think sometimes there is a better atmosphere outside of courtrooms; we can sit down profitably. I would be happy to host a lunch if you girls would come in, and talk right off the record if you want to. There may be some things that we can do while there is still time.

Thank you.

The CHAIRMAN. Thank you.

Mr. Gonzalez?

Mr. GONZALEZ. Thank you, Mr. Chairman.

I can readily understand why the ladies here could be surprised about what their benefits are supposed to be, being far from what it is, because I think each member of the committee knows that they have seen articles in the press about Congressmen getting \$400,000 a year.

Mrs. DUNN. And free dental service.

Mr. GONZALEZ. It is surprising for us to see some of the fringe benefits we are supposed to have. So I can understand.

Mrs. DUNN. Have you gotten your teeth capped?

Mr. GONZALEZ. I figured as much even before I heard it from you. What the paper record would indicate was available in reality may

not be right. On paper your husband is supposed to be receiving so much but in effect, translated to what you get, it is a very different story.

Mr. GUYER. Would you yield just 1 minute?

At that point, let me say the total amount of money going to everyone is so pitifully small it would not even compare to one congressional mistake; the total amount.

Mrs. DUNN. I am going to tell you something. I am very well taken care of. I get \$1,373 a month. If I can't hack that with one child, forget it. I have a sister with nine kids. Believe me, I am not crying poor mouth. I am well taken care of with my husband's check. I am earning it. These little goodies, trips, if there is a fringe benefit, I want to know about it. I am not the person to take advantage of it.

That is the type of thing they are talking about, this freebie stuff.

Mr. GONZALEZ. I understand, except to a certain extent it could have been better spelled out.

Mrs. DUNN. Yes.

Mr. GONZALEZ. I think that could be very definitely improved upon. But one thing I would like to know, do any of you face any legal problems because of the current status of your husband?

Mrs. DUNN. Well, in what aspect?

Actually, when it comes time, if there is a status change made, there will be some legal problems; definitely, everyone has them in a death.

Mr. GONZALEZ. What I meant was have you had some legal problems associated with the particular status that your husband enjoys?

Mrs. DUNN. Yes; I have.

Mrs. BOSILJEVAC. I have, too.

Mr. GONZALEZ. Then what do you do? You have to hire your own lawyer?

Mrs. DUNN. Yes.

Mr. GONZALEZ. Is there any legal aid provided you?

Mrs. DUNN. In my case, I have to say one thing, I may seem hostile in my testimony of DOD, but if I ever handed you a record of Joe Dunn's file, you would not only be hostile, you would be hyper. It was all handled poorly.

I must say honestly for the record, the Navy and I have a good rapport—after I straightened them out.

Jack Colgan is sitting somewhere in here. He is my casualty assistance officer. I have at times been mad, like finding out about my husband's shoot down in the paper. That is kind of hard to take.

When Secretary Kissinger made the statement that he had information on men in China that were dead and he made that statement and then, the next day, in big black bold print, "Dunn on MIA decease list," with a picture of him underneath the headlines. That angered me.

I had gone through the agony of telling my son that his father was not on the deceased list, and he believed me, and the very next day he goes out and sees this paper with the black bold print, "Dunn on MIA decease list." Then I had to—he was delivering papers and that is when he discovered it, in the driveway, and I had to pick him off the driveway literally and explain to him that this was not so.

He said, "You promised me he wasn't on the list, you said he wasn't on the list, and I come home from school, I see this."

Well, just like they say when you drown, everything comes back to you; it was just like 8½ years ago, when I found out in the newspaper about my husband being shot down. Here is a reporter saying, "President Ford has information on your husband, he is on the list as deceased." It was the President's fault. It was just so poorly handled.

So in all the aspects this may be a minor thing, but when you are trying to hold on to your sanity, it is not a minor thing. I want it on record that the Navy has been good to me. Higher officials I do have problems with.

Mr. GONZALEZ. Well, I believe in addressing yourself to my first question you have answered another question that I had.

The meeting this morning I understand was to try to review the present law, the statutory provisions that govern this. After all, this committee is a select committee. It has a fixed limited period for its existence. It may be that the next Congress may choose to continue a similar type of work but we will have to come up with some report.

Mrs. DUNN. You have to, I know that.

Mr. GONZALEZ. And some recommendations that hopefully will be created and helpful and this would be a very important area. How can we improve in the way these things are handled?

Mrs. DUNN. The thing is, I think, a good example to all of you sitting here—it took 11 years to get this committee. We worked on it for 1 year.

Actually, sitting down with 10 men dedicated to this issue solely, that is very unique, all right, but for it to take 11 years—I can't wait until the next 11.

Mr. GONZALEZ. Let me just say this because I do not want to exceed my time, I think in all fairness, sometimes our democracy is not that efficient, and perhaps if we were that efficient it would not be a democracy, I do not know. But I do know this, that there are other committees and they were legislative committees—

Mrs. DUNN. Only the Zablocki committee, and that was just hearings.

Mr. GONZALEZ. It was a subcommittee.

Mrs. DUNN. Right.

Mr. GONZALEZ. But I also think that the administration has done what it could—you know it is not very easy to get a unified effort where you have three separate departments, each with its own array of problems.

I am sure that the Army experience is very different from the Air Force experience, and then the Navy experience a little different from both of the others.

I can see where now in retrospect it seems as if, "Why didn't we anticipate this?" But then we have also to remember that Vietnam was a different kind of war, even somewhat different from Korea.

So I think it would be very unfair to say that in the main people are not concerned. I find that there is a great deal of concern. There may not be much information, but I think there is a base of concern.

I think the fact that the select committee was even established—it is very difficult to get resolution for a select committee.

Mrs. DUNN. But an old warhorse like myself and Mr. Montgomery, he has been with us since the day one, he pushed it.

Mr. GONZALEZ. Then like you say, you disciplined the Navy. So we cannot underestimate the effort. But we have to go on from here.

Mrs. DUNN. That is the important thing.

I am not here to determine how long you are going to stay in business or if you ever—

Mr. GONZALEZ. No, and it is not fair to ask you that.

Mrs. DUNN. It isn't.

Mr. GONZALEZ. This is a judgment and decision that has to be made on our level. But we do—I am sure Congressman Lloyd wanted—want to know your thinking because it is important.

As you say, you are most directly involved, more than anybody else. Therefore, that is important. But I know that each one of us wants to come up with very sound and constructive and creative recommendations.

If we go out of existence, I do not think anybody on this committee believes that all the information possibly obtainable even yet has been obtained. This may be correct. It may turn out that the years will prove it was not correct. But I do not think anyone feels that everything has been learned.

We do not have access. There is still no reciprocity with the governments in question.

Mrs. DUNN. You don't have the information.

Mr. GONZALEZ. That is right. So we have to keep an ongoing effort, as I see it.

This is just one interim phase of it, as I see it. I do not think it is going to be conclusively decided on just one level. But we do have a continuing responsibility, and I for one am very grateful for your time and patience in presenting your testimony.

Mrs. DUNN. The only thing I would like to leave you with is, I am not here to defend Maureen Dunn. I am capable of taking care of myself. I am very, very earnestly concerned about you defending Joe Dunn's constitutional rights. That is all I am concerned about.

I don't care about who gets the benefits, I could care less.

Mr. GONZALEZ. But unfortunately, not everybody is a Maureen Dunn, and we do have less fortunate relatives and survivors who need help, they do need some help.

Mrs. DUNN. But no, this is the whole thing, this is what turns me off. No, you shouldn't care about those people. It is the men you are here to defend, not Kay, her, him, or his kids, but Joe Dunn, Mike Bosiljevac, Tom Hart, and Earl Hopper, Jr.; that is who you should care about.

Mr. GONZALEZ. I don't doubt that.

Mrs. DUNN. That is my whole fight. I am sorry if Mary Jane has a nervous breakdown. If I am callous, I am callous. But it is the constitutional rights, you are sitting here as a constitutional rights committee, to defend their rights, not mine. I can take care of myself. These people who do act like they are defenseless, they have the best little someone on the side that will help them. I am sure of that. They are very capable of taking care of themselves. You worry about the military man; that is what I want.

Mr. GONZALEZ. I think we have to have compassion.

Mrs. DUNN. I know you have to have compassion, but if you get involved in that, then you become personally involved.

Mr. GONZALEZ. But that is not happening. The central fact, the whole thing that gives rise to everything is the fact that you have

Americans whose definite status is still not ascertained. This is what gives rise to the existence of the committee.

Mrs. DUNN. Right.

Mr. GONZALEZ. This is what gives rise to your presence. I do not think that is forgotten.

Mrs. DUNN. I am not saying it is. I am just saying myself what I would recommend for you here today is when you do end, please be worried about their rights, do not be worried I won't have enough or she won't have enough, or the kids.

I am not saying that is wrong. I know a lot of Congressmen who have done this to me, have been great in giving me benefits or helping me with benefits. I don't want that, I really don't. It helps, but I don't want it.

Mr. GONZALEZ. I think that is one thing that sets our Government apart, it has been considerate.

Mrs. DUNN. It has. You have been a more than generous Congress in regard to this issue. I can never take that out of context. You have been outstanding in regard to the people and making sure we are taken care of. But that isn't my fight.

I am more worried about Joe Dunn's rights being defended.

The CHAIRMAN. I would like to make one comment before recognizing Mr. Gilman.

No matter when this committee ends, it is going to be up to the select committee to decide who should carry on the efforts in behalf of the MIA's after the committee goes out, whether it should go to the Armed Services Committee, the Subcommittee on Personnel, whether the files and records and the actions to be further carried on should go to the International Relations Committee; I only mention that, this is a decision and a recommendation that this select committee will have to come up with some day, and it is something we should be thinking about.

Mr. Gilman?

Mr. GILMAN. Thank you, Mr. Chairman.

The CHAIRMAN. First of all, I would like to apologize for being late. I had another hearing this morning.

I have read the testimony of Mrs. Dunn, Mrs. Hart, and Mrs. Bosiljevac. I am very much impressed with some of their suggestions and recommendations. I am concerned with one thread that seems to wind its way through all of the testimony is the fact that the hearings are leaving a lot to be desired and leave a great distance between the intent of the statute and what apparently is happening at the hearings.

When I see a statement that you are confronted with a presumption of death rather than a presumption of life, I think that there is apparently some misinterpretation of what the congressional intent was in the statutes.

I would like to hear a little more about why you feel that was pervasive throughout the hearing. Were you required first to present your proof, all of your proof at the hearings?

Let me address that to all three of you, if you would just give us a little more insight in the manner in which you went through some of these hearings, Mrs. Dunn.

Mrs. DUNN. My hearing, I received on January 20 a certified letter from the Navy. My hearing was supposed to be in February, but they

very graciously consented to April. OK. This is the paragraph that I find distasteful:

"You have the right to reasonable access to the information upon which the status review will be based. A summary of this information is attached for your convenience."

Well, if this is a summary of what I am going to use in this case, forget it. It is about the background of the status review, who can be there, who can't be. That is the only information.

Then they did say, If you desire you may review the records from which this information was extracted, at such and such a time.

You also have the opportunity—

Mr. GILMAN. Excuse me for interrupting.

Where did they make those records available to you?

Mrs. DUNN. At the Arlington annex in District of Columbia.

Mr. GILMAN. Where was your home at that time?

Mrs. DUNN. Boston suburbs.

Mr. GILMAN. Did they offer to make the records available in your own area?

Mrs. DUNN. No. I was going down with my lawyer to look at the records, prepare somewhat of a case, and come back. But that is why I had to cancel it to April, because this was January 20 and we were going to do the original hearing February 17. I just did not have the time to prepare a case, to go before a military tribunal with all they had behind them.

But then this is the kicker: "We ask you to bear in mind the central issue in the review is whether there is any longer a reasonable presumption that your husband is alive. Submit matters that should address this issue."

In other words, just think at all times that you have to prove he is alive. I mean, why should I have to prove that? I would and I will, to the best of my ability. It is just that it is inconceivable to me that with reasonable access to his files, how could I prepare a really just case, you know, before this group, with just reasonable access to his files?

Mr. GILMAN. When you appeared before the group what was the order of proof?

Mrs. DUNN. My review was canceled because Mr. Montgomery and Mr. Rhodes called them on it.

Mr. GILMAN. You did not go through with it?

Mrs. DUNN. I never received a notice of cancellation either.

I think that is fairly bad, I think you should take someone to task on this. Colonel Hopper told me this was upheld. I was already proceeding with the letter and proceeding with my case.

Mr. GILMAN. Mrs. Hart, did you go through a hearing?

Mrs. HART. No, sir. The Air Force has never attempted to review my husband's case.

Mr. GILMAN. Mrs. Bosiljevac?

Mrs. BOSILJEVAC. My husband's case was reviewed.

Mr. GILMAN. Did you appear at a hearing?

Mrs. BOSILJEVAC. I was not allowed to appear at a hearing.

Mr. GILMAN. It was reviewed without any personal appearance?

Mrs. DUNN. That was official review.

Mrs. BOSILJEVAC. Well, there is a recommendation in their review procedure under the discussion portion which was not provided to me until July of 1975, when it became available in the reviewable record that I could see, that he was a just case for presumption of death. It said throughout that he had survived the incident and it was 1972, the end of the war.

There was, I would assume, some reasonable doubt.

I could also submit to you the fact that there was information, misleading information in the record, which I later found that was downgraded. What I am saying is that if three colonels are sitting there and they don't know Mike Bosiljevac or what he looks like or other things about him—if they look at a picture of a dead man that is in the record, they may not know that the picture is not of him. They make a judgment on what is given to them.

When the regulation says that the service secretary or any designee may not review the classified information. I am sitting there wondering do these men—not you, but if I ever got to a hearing—do these men sit here with this information and pictures and whatever, things that I now know were available at that time?

Mr. GILMAN. Do you have information now that you did not have at the time of this review?

Mrs. BOSILJEVAC. Oh, yes.

Mr. GILMAN. Do you know whether that information was in the file at the time of the review?

Mrs. BOSILJEVAC. I can't be sure. The only think I know is, when I went to Arlington Annex on my own and to other places, they simply said to me, I am paraphrasing that, "Essentially we give all the data to the Air Force and it is discretionary whether or not they ever tell you."

That I think is a disturbing procedural thing for us to know about. We have been accused, for instance, I think of wanting to know sources and this type of thing. I could care less how anything is gathered or anything else. I don't care.

All I want to know is, is he dead or alive, so I can make a decision on my life also; that my husband is treated in a fair and proper manner by his reviewing officers, I am concerned about that, and I am concerned his rights haven't been upheld because, for instance, when we talked—Mrs. Standerwick and I—to General McNeil in the summer of 1973, 2 months before my husband's status was reviewed, he said to me, look, if it were up to me I wouldn't make a recommendation of presumptive finding, yet 2½ months later he signed a document that indeed said this is a valid case for a presumptive finding.

It didn't give the presumptive finding because there was a court order holding them back at that time. In other words, he would have been declared dead. He said to me at that time, I am going to Washington, talking to people up there, we are going to be clarifying what we are going to be doing.

I am concerned that the clarification was to go ahead and PFOD.

Mr. GILMAN. For future procedural reform, what would you recommend with regard to these hearings?

Mrs. BOSILJEVAC. I would recommend, as we all recommended, that the title 37, sections 555 and 556 be reviewed by a competently biased

body, because, for instance, just by virtue of the fact that it existed in World War II, in Korea, in Vietnam, does not make it adequate.

There are things, for instance, when I asked the military staff judge advocate at Randolph Air Force Base, "What is wrong with this law?", he just kind of threw his hands up at me and said, "Well, there are things like not notifying the wives of their obligation to notify the State courts as to a finding of death," and if they didn't, then their marriage—you know there are problems with these kinds of things, there are problems with regard to the marriages. I am not sure exactly what they are. Our attorneys could provide you with that.

Mr. GILMAN. When you talk about an independent review, you are suggesting an agency or a body independent of the Defense Department?

Mrs. DUNN. Right.

Mrs. BOSILJEVAC. Independent of the Defense Department certainly. That is not to be critical of the Defense Department, because they are only following what is policy. They are only following what is in accordance with the law. They are doing exactly what is legal. Whether it is right or not is another problem.

Mrs. DUNN. I think we are talking of an unbiased legal group outside of the Government, not necessarily outside of Department of Defense, outside of Government auspices or anything, that it is a legal group doing the study.

Mr. GILMAN. Are there any reforms that you would like to add?

Mrs. DUNN. No. I just wish it did not read, "Dead, to prove alive," and that is exactly how I read it.

Mr. GILMAN. Mrs. Hart?

Mrs. HART. No, sir. I just hope that you recommend it be reviewed.

Mr. GILMAN. Let me address a question. I think Mrs. Bosiljevac has answered this. The other two ladies, Mrs. Hart and Mrs. Dunn, have you now received information that was not available to you when you first examined your files?

Mrs. DUNN. Yes.

Mrs. HART. Have I received information? You mean an outside source?

Mr. GILMAN. No; from the agencies, that has trickled down into the file now that wasn't available initially when you reviewed it.

Mrs. HART. I have received additional information. I would hesitate to say that it has trickled down. I do know some information I received in the fall of 1973 was actually in existence in January of 1973, and they did not give it to us until November; I had just come back from Laos.

Frankly, I don't think they had any ulterior motive in not giving it to us. I think it was a matter of verifying the information they had.

Mr. GILMAN. Was it significant information?

Mrs. HART. Yes; it was significant information. If the Defense Department chooses to consider it a credible report, it is significant in that supposedly there is a gravesite at the area where the plane went down, with remains buried there.

Mr. GILMAN. Mrs. Dunn, did you have a similar situation?

Mrs. DUNN. Well, my situation is, in the past 8½ years, every time you look at the record there is something else.

Mr. GILMAN. Some additional evidence?

Mrs. DUNN. That probably they may have had, but either it wasn't declassified, or something. Every 3 years there is a declassification. There has been each and every time I looked at it, additional information which I think is relevant to his case.

Mr. GILMAN. Pertinent and important information?

Mrs. DUNN. Yes.

Mrs. HART. Mr. Gilman, may I, please?

Mr. GILMAN. Yes.

Mrs. HART. I am speaking for myself, quite frankly.

If you made the recommendation today that this law be reviewed by an unbiased legal body and closed your hearings tomorrow and shut down your committee tomorrow, I would not be dissatisfied because, frankly, I can appreciate that anything you get is going to depend, in the way of an accounting, is going to depend on Hanoi, Laos, Cambodia, et cetera.

But this is something you can do. If we don't get an accounting, no matter how long and how hard you work, you won't be successful, and it won't be entirely your fault because you have to depend on someone else. But to get a review of this law doesn't require anybody else's cooperation, any outside country's cooperation. You can be partially successful, and you can restore a great deal of faith for some of us; in addition to which you can prevent the same thing from happening again with my children and everyone else's children.

I don't want to be an MIA wife and then an MIA mother and then an MIA grandmother and have the same law apply to my husband, my son-in-law, my daughter, et cetera. Just because the law is old does not make it good. If it is good it will stand up to the test of a review. It may cost something, but it will save other time and money.

Mr. GILMAN. An independent review body to review all of the evidence and make an independent decision, after the decision has been made by the Defense Department, is that what you are suggesting?

Mrs. HART. That is what I am suggesting. I have a stake in it, DOD has a stake in it. We can't be unbiased. Somebody who doesn't have a stake in it other than just simple justice should review it.

Mr. GILMAN. I appreciate your recommendations.

Do you ladies have any other recommendations to our committee while you are here?

Mrs. DUNN. I just want to thank you for your endurance.

Mr. GILMAN. I want to thank you ladies for taking the time to present your thoughts to us.

The CHAIRMAN. Thank you, Mr. Gilman.

Mr. McCloskey?

Mr. McCLOSKEY. Yes.

Mrs. Hart, you asked a question in your testimony that I thought we should try to answer, what this committee had done with respect to Laos.

Mrs. HART. Yes, sir.

Mr. McCLOSKEY. We went to Laos late last year and not entirely with the cooperation of our State Department. In fact, they did not assist us to meet with the Laos representatives. But the circumstances

when we went there, the Pathet Lao Government had only recently come into existence, at least the Pathet Lao element within the coalition had taken over.

We met the chief of staff in Vientiane, who advised us that, "We have no Americans being held prisoners, there were no Americans held by us alive." He asked us the rhetorical question: "Why should we keep Americans alive and feed them when we can't feed our own people?"

He was very hostile to us initially. I think that warmed up somewhat as the conversation went on. Essentially they viewed us as being there initially as a gesture on the part of our military to try to get the State Department the right to use military aircraft in Laos. They were extremely proud of their new nation and their sovereignty. They were not about to let any military people search for gravesites or go to gravesites in Laos.

They were not about to let any civilian Americans go there, because their experiences with civilian Americans were that they were a cover for CIA, including the DIA program. We volunteered that we are from the Congress and we have some locations, crash sites, that we think we can identify remains. He said they would take that under advisement. We have given them files of some of the MIA's and we have a meeting coming up with a Laos representative in New York in the U.N., but that Government is still too new and I think perhaps unsure of itself, or perhaps unsure of us and our attitudes toward it to really be able to rely on, that we are getting any official statement of policy from them.

Following General Walters' statement before this committee, we asked him some additional questions. He furnished us a summary of all of the representations that had been reported in the press by the Pathet Lao Government in the early 1970's, in which a Colonel Pethrasy had indicated that they did have POW's, that American pilots had been shot down and, if America would ever stop the bombing, they would release those pilots, at least discuss them.

We have had no followup on that. We have had no representation from the State Department that they are actively attempting with the Pathet Lao Government to resolve this issue.¹

We do have the clear representation, unequivocal representation from the White House that they have appointed people to negotiate with the North Vietnamese. But the Laotian situation is unclear.

I for one, while I would be ready, frankly, from the files that I have reviewed, to suggest that it is time to make a presumptive finding of fact, of anybody shot down in Vietnam or South Vietnam; I cannot say that with respect to Laos. We have not exhausted the means that this committee has available to it to be assured that all efforts have been made with the Laotian Government to either identify people that are possibly alive or locate the remains of people that are possibly dead.

¹ The committee has been informed that on April 19, 1976 the American Embassy in Vientiane presented a diplomatic note to the Lao People's Democratic Republic expressing the concern of the U.S. Government for American prisoners and/or missing in action in Laos and seeking an accounting for them. On April 20, 1976 the Charge of the American Embassy and the State Department Director for Vietnam, Lao, and Cambodian Affairs met with the Lao Secretary of State for Foreign Affairs to discuss the question of U.S. MIA/POW's. They were informed that the Lao Government's search for missing Americans had achieved no results to date.

The testimony before us that has come from a succession of witnesses, including one individual that was shot down, captured in Laos, are not indicative that there is much hope that an American POW could survive the Laos terms of captivity.

I would say that under this law which you called to our attention that the Secretary, under section 555, would have a difficult time finding a presumption that anyone is still alive from the testimony that he has received, the same testimony that this committee has received.

It does not really hit the questions you raised. I do not know how the law can be changed. The regulations that you referred to are clearly inappropriate. I think they have now been so recognized by DOD.

Let me read to you if I may this section 555, because I do not know frankly how to improve that. When you have a war with explosions, planes being shot down, people on patrol, somebody has to make a determination whether there is a presumption a man survived or not. We owe that to the living as well as the deceased. I do not know how to improve on this.

Let me read you the language. Maybe from your experience you will have some change in it that you can recommend to us that would be helpful.

Section 555 is purely this:

When a member of a uniformed service entitled to pay and allowances under Section 552 of this title has been in a missing status, and the official report of his death or of the circumstances of his absence has not been received by the Secretary concerned, he shall, before the end of a 12-month period in that status, have the case fully reviewed.

After that review and the end of the 12-month period in a missing status, or after a later review which shall be made when warranted by information received or other circumstances, the Secretary concerned, or his designee, may—

(1) if the member can reasonably be resumed to be living, direct a continuance of his missing status; or

(2) make a finding of death.

Now, I gather that you feel that he should be entitled to the presumption that he is alive rather than require that there is a reasonable presumption that he is living; is that the thrust of your testimony?

Mrs. HART. He is asking you.

Mrs. DUNN. Yes; that is my assumption.

I have it here in front of me. That is the presumption I have.

Mr. McCloskey. The difficulty I have with that in a combat situation is, I think maybe it is one circumstance—

Mrs. DUNN. I can only give you two examples of two friends that were declared dead and came home in 1973. They were declared dead according to this.

Mr. McCloskey. There is no question you can make a mistake. But when a plane is missing and there is no word, should there be a presumption that the man is alive or should you be required to show he is alive?

Mrs. DUNN. I think before they do it all avenues have to be traveled. I don't think all avenues have been traveled with regard to some. I know I could probably name most of the cases that you are going to recommend. I probably would have right away. All right. But you are

thinking, too, as a military man would, a guy with a full bomb load goes into a side of a mountain, sure he is dead.

Mr. McCLOSKEY. In a war, particularly with the war with Laos, was that not one that either side wanted to see prisoners alive?

Mrs. DUNN. This is the thing, but also, this bit of not keeping good records. I know some were captured in Laos, brought over into Cambodia. I know one whose picture was taken between two trees with a sheet held up behind him in Cambodia.

So they do keep a record of sorts.

Mr. McCLOSKEY. Certainly the Vietnamese have. We have never found either the Cambodians or the Laotians have kept any records at all.

Mrs. DUNN. This fellow is a live example. He could give you testimony. His picture was taken in front of a sheet between two trees in Cambodia, on the Cambodia-Laos border. He has given testimony to this publicly.

OK. Now I don't know if you have ever seen that record, but he has. It was taken.

Mr. McCLOSKEY. Let me ask that question, too. Is there anything about any of your three cases that you feel we should review that defense has not made available?

Mrs. DUNN. I feel in mine I think a lot more could be, especially relating to the shoot down over China. I think a lot of material—it is a very unique case. I think it has too much information going for it to be just presumed as dying.

Who used his beeper 7 or 8 hours later for 20 minutes? I have had three guys give unconfirmed reports—

Mr. McCLOSKEY. We have had the same kind of testimony though that those beepers could be turned on by anyone.

Mrs. DUNN. His is manually operated.

Mr. McCLOSKEY. A kid could find it and turn it on.

Mrs. DUNN. Sure, I am not saying he turned it off. You are not sitting in the middle of a raft in the ocean. He turned it on, then off, then on, to notify them he was alive. And then he shut his off. Seven or 8 hours later for 20 minutes someone did turn it on.

Mr. McCLOSKEY. I do not question the possibility that in many of these cases somebody was alive for some period of time. The problem is surviving 7 years in an environment of this kind.

Mrs. DUNN. I am not saying that. You didn't ask me did I think he was alive now.

Mr. McCLOSKEY. That is the question. The question has to be determined now.

Mrs. DUNN. But from the evidence that they have, which is the same evidence they are working on, as to a presumption of death, I have tried to work a presumption of life. So it tallies out to the same thing.

I have as much information, if they go by what they have to prove he is dead, I have as much information to prove he could be alive.

Mr. McCLOSKEY. Let me go back then.

Do you feel that under the circumstances that the law should be any person that was captured or seen alive after he was shot down, that 7 years later our law should be that that person is presumed to be alive unless there can be shown proof that he passed away?

Mrs. DUNN. Yes; I do. Maybe it is a ridiculous feeling but I do feel it. I would feel it even if it wasn't my husband.

Mr. McCLOSKEY. That is a bona fide attitude. I think when we review the statute, we have to report on that point. Clearly under this law in a combat situation the privilege is given to the Secretary that he can make a finding of presumptive death unless there is evidence to indicate that the person is alive.

Mrs. BOSILJEVAC. Could I ask you something, because you mentioned in the case of North Vietnam that you would feel that presumptions of death are warranted. Is that based on—for instance, my husband was shot down late 1972. You know there was a lot of information. There was a report of capture given us, there was information in the prison camp indicating, from a guard, to my husband's pilot Colonel O'Neil, that Mike was alive, well, uninjured, and luckier than you, in quotes.

Mr. McCLOSKEY. What was the last?

Mrs. BOSILJEVAC. Luckier than you, alive, well, uninjured, and luckier than you.

Now I am concerned because the first confrontation that I had—and, unfortunately, it was a confrontation with the military casualty branch at Randolph—was, they said to me, your husband is dead; got it, dead? I said, based on what?

They said, he must be declared dead based on he didn't walk out as a POW, he didn't send a message out, and the third, which to me raises the hair on the back of my neck, we believe North Vietnam. Essentially, how can we believe North Vietnam?

Mr. McCLOSKEY. It is not, believe me it is not necessarily a matter of believing North Vietnam.

Mrs. BOSILJEVAC. Is it based on information, does someone know that my husband is dead?

Mr. McCLOSKEY. My own concern, why I reached the conclusion under those sets of facts—and agreeing with everything you say, and let's assume it is all true—I cannot imagine that the North Vietnamese Government in 1976, if they have any living Americans captured, are going to admit they lied about it. Their recordkeeping is absolutely clear.

Mrs. BOSILJEVAC. Impeccable.

Mr. McCLOSKEY. They kept records in every village where a plane went down, if a woman was behind an antiaircraft gun, and the plane went down in a village, she became a heroine, the pilot was disposed of, the plane was stripped to be used as a monument, and they made rings and jewelry out of parts as a gesture to build their own morale. But the idea that in 1976 Tran Van Dong or the North Vietnamese Government is going to come to the United States and say "We lied to you," it is inconceivable.

I do not think they could do that, knowing the attitude they have towards dignity, pride, their record.

Mrs. BOSILJEVAC. Has the precedent not been set before with Communist nations many times over, specifically with the testimony that was given to you by Ms. Anita Lauve—

Mr. McCLOSKEY. The press—

Mrs. BOSILJEVAC. Wait a minute, sir. With regard to the Vietnamese taking French prisoners into other countries and also saying, "Okay, we have given you all of your prisoners back, all of them," and without any problem and coming back later and releasing people who were in captivity?

Whether they want to call them prisoners or not is something else.

Mr. McCLOSKEY. That is a valid point, but you have not had the French experience duplicated with the Americans. You have had a bona fide negotiating prisoner exchange.

Mrs. BOSILJEVAC. That is an assumption on your part.

Mr. McCLOSKEY. I would be glad to consider any other facts if they could be presented to me. But in French situation, you had a war that had gone on 8 years with the French, that ended in 1954. You have had here a situation of negotiated prisoner exchange between two sovereign nations. There is no way that we have the right to go to the North Vietnamese and say, "You lied to us." They are saying to us, in effect, "You deceived us, you promised us \$3.5 billion in assistance."

Mrs. BOSILJEVAC. What I am saying is, I feel they have ample motivation based on the types of things that you are just discussing for doing precisely what I am implying, that they would have withheld American prisoners for technology—

Mr. McCLOSKEY. There is a disagreement on that point. I cannot conceive why they would turn 200 prisoners loose and keep 15.

Mrs. BOSILJEVAC. Why is it then, for instance, in my view I just feel that it is not adequate to say we believe North Vietnam.

Mr. McCLOSKEY. I am trying to concede to you that this is not based on believing North Vietnam. It is based on the fact in a government of that kind I can find no motivation of any kind for them to keep anyone alive. The question being asked us is, when is somebody going to tell the MIA wives that none of their husbands are still alive?

Somebody has to make a determination. You are asking for a fair humane judgment as to whether your husband is still alive. All I can give is my own judgment based on my own appraisal.

Mrs. BOSILJEVAC. I am not asking you to decide whether my husband is alive; I am not asking you to.

Mr. McCLOSKEY. You are asking us to review the law to ask that the determination be made by the Secretary of Defense under fair rules. That is what I am dedicated to trying to do.

Mrs. BOSILJEVAC. That is right.

Mr. GILMAN. I think we should bear in mind that once a review is made in a classification of missing in action, then there is a presumption of life, and the Secretary has the burden then of coming forward and showing the presumption of death, to draw a conclusion of death.

I think sometimes we forget that that seems to be written into the statute. I would like, if the gentleman would yield further, there seems to be some question in our minds about your prior recommendation.

When you were suggesting a review of the cases by an independent body—

Mrs. DUNN. No, the case of a review of the law.

Mr. GILMAN. A review of the law for changes in the law?

Mrs. DUNN. Right.

Mr. GILMAN. You are not suggesting review of each and every case?

Mrs. DUNN. No.

Mrs. BOSILJEVAC. No.

Mrs. DUNN. That would be impossible, because no matter how I feel, my husband is still a military man. I wouldn't want an outside body to do that.

Mr. GILMAN. You are still satisfied that the Secretary's finding should be conclusive as to all determinations?

Mrs. DUNN. As a military wife, I have no idea. I am sorry, not an idea. I have no choice but to accept the Secretary's decision.

Mr. GILMAN. Thank you.

Mr. McCLOSKEY. Mr. Chairman, I hate to take the time, but I think we are at the nut of a very important point of what we have to do. I think the discussion is valuable.

The point you raised, Mr. Gilman, is section (b) of 556:

When the Secretary concerned receives information that he considers establishes conclusively the death of a member of a uniformed service he shall, notwithstanding any earlier action relating to death or other status of the member, act on it as an official report of death. After the end of the 12-month period in a missing status prescribed by section 555 of this title, the Secretary concerned, or his designee, shall, when he considers that the information received, or a lapse of time without information, establishes a reasonable presumption that a member in a missing status is dead, make a finding of death.

Our problem here is whether or not, after the prisoner exchange, if that is a fact, that after 12 months following the prisoner exchange is the fact sufficient to establish a reasonable presumption that the member in a missing status is dead?

I would have said up until the prisoner exchange that every one of these fellows was entitled to a presumption that he was alive. The question is, after the exchange of prisoners are we in effect believing the North Vietnamese? Or is the fact that they have not been returned a fact sufficient to establish a reasonable presumption that the missing member is dead? That is the key question.

It all depends on the burden of proof.

Mr. GILMAN. If the gentleman would yield further, I point out that section 555 (a), once a classification has been made of missing in action, then there is a presumption that the man is living, and then it goes on to say if the member can be presumed to be living, they direct a continuance of his missing status or come in and make a finding of death.

It would then seem to be the responsibility would rest upon the Defense Department to prove that there was a death, once having made that classification of missing in action, either through a conclusion drawn from the facts or through outside evidence.

Mr. GONZALEZ. Will the gentleman yield for a question?

Mr. McCLOSKEY. Certainly.

Mr. GONZALEZ. Since we are discussing the recommendation for review of the present statutory procedures, let us assume the Secretary indeed, in fact, makes a decision or a presumptive finding of death and, subsequent to that decision, the individual presumed to be dead is found to be alive. Now, what are the provisions in our laws to give a nunc pro tunc, that is, to give him all during this period of suspension, presumption of death finding, a resumption of all benefits he otherwise would have been entitled to?

The CHAIRMAN. May I answer that?

Precedent has been established in 1973 when it was either 8 or 10, I cannot remember exactly, of Americans who had been classified as

killed in action, which basically would be the same thing; these 8 men, when they came out, they were given the same status, of course, of being alive again, and the families were not required to pay back the Federal insurance or the benefits that had been paid plus the commercial insurance. One insurance company required that half of the premium be paid back, but that has not been settled.

The Government did not require any of these families who had received the death benefits, including the social security, to pay back any of the funds, and they were taken back to that date where they were declared killed in action and given the additional benefits of being alive, from pay and from all benefits of being alive back to that date.

Mr. GONZALEZ. There is no statutory limitation or cutoff.

The CHAIRMAN. No; there is none.

Mr. GONZALEZ. As in other legal situations—for example, in the case of a presumptive finding of death, the surviving spouse would then have no legal impediment to marriage. But suppose, as I say, he returns.

Mrs. DUNN. This is why the whole thing has been carried on. In World War II, they had many bigamy cases, because he was declared dead, and she went out and remarried. This is one of the big reasons why DOD for many years really watched who was declared dead, because they had so many legal implications from World War II and Korea, from the legal side. They were paying for this one, and then you talk about their going back to pay one wife, for example—she was remarried, and when the fellow came back, she wanted all of the pay that she had been due from the time he had been declared dead until the time he came back and almost won the case. And she had been remarried. There are so many legal implications. That is why the DOD had so many still kept in that status.

Mr. GONZALEZ. This is a reason I have raised a question about any legal problems that may have arisen. I notice that, for example, in your case you were notified of a review, but felt you would be inadequately prepared, and therefore obviously I assumed you sought counsel.

Mrs. DUNN. Yes; I did, at my expense. His trip down here, my trip down here, back, and all of the court stenographers.

Mr. GONZALEZ. That is what I was asking about a while ago.

Mrs. DUNN. Mrs. Martin gave an estimate of \$6,000. I would venture to say my estimate would probably be \$8,000, because I do not have the access to a lawyer that is my friend, and I do not have an access to trips all over the place, and so on.

Mr. GONZALEZ. I understand in your case, you were not notified of a review.

Mrs. BOSILJEVAC. That was the hearing.

Mr. GONZALEZ. That is a review.

Mrs. DUNN. Yes; but it is not a status review hearing. Every man in that position has had a status review. Every man in this status has had a year and a day review. And that is what Kay is referring to.

Mrs. BOSILJEVAC. What I am saying there, too, is that in his case there was other additional evidence that I am certain, I am absolutely certain, that these people who looked at this case at the time, either did not consider or for reasons—

Mrs. DUNN. I think he wants to know—when Ben said was it an involuntary status review.

Mr. GONZALEZ. What I am saying is you were not notified.

Mrs. BOSILJEVAC. I am notified by the law, but I could not be present. But that has been corrected. I can now be present. But that is not—

Mr. GONZALEZ. That is because of the court decision.

Mrs. BOSILJEVAC. The only reason he was held in status is because of the court decision according to their documents.

Mrs. DUNN. That is one of the things we would like to see, Mr. McCloskey, on 555, when it says 12-month period in that status, have the case fully reviewed. The family should have access there, and should have had court attendance at that thing, the year and a day.

Mr. McCLOSKEY. Let me respond, if I may, to that.

I don't think there is anybody on this committee that doesn't agree that every member of the family that is related to the MIA should have full access to the same information that the Government has, and that the Government ought to exhaustively have available all information. I think we have assured that now. At least we have the representation from the Defense Department.

Let me go back, if I may, though, and just ask you a basic question.

We really had two functions in this committee when we were formed: One, to review the procedures, this law and the procedures that have been followed, and whether or not the Defense and State Departments were handling it adequately. And the second function, and our primary function essentially, was to force the State Department into a posture of negotiating and viewing the MIA question as a high priority matter, when it was viewed by many of us as a very low priority on Secretary Kissinger's calendar. Once the State Department moved into that posture, as they have with Vietnam, and hopefully will with Laos, this committee really has no part. We are not a negotiating body under the Constitution.

We should not be. Our mission was to force negotiation. If that part has been completed, the only purpose for this committee remaining in existence is to exercise an oversight function on DOD as it goes through these procedures in 2,300 cases, I suppose now, of unrecovered bodies.

What I would like to ask you is this: If this committee completed its work, and were satisfied that the negotiations with Laos and Vietnam were proceeding adequately, and directed and recommended that the Defense Department immediately initiate these procedures, but that this committee stood by, not as an appeal from the procedures, but as an oversight committee to make sure that DOD was conducting these presumption hearings in such a way that you were guaranteed full access to the same information, that they had the full information, but we existed solely for that purpose, would you think that that would be an appropriate way for this committee to wind up its work?

Mrs. BOSILJEVAC. Can I answer that? No. Because I do feel there is information beyond your access.

Mr. McCLOSKEY. I don't think so. I've talked with the President personally on this subject, and he has made an absolute assurance. One thing Gerry Ford has guaranteed is that nothing will be held back.

Mrs. BOSILJEVAC. To you.

Mr. McCloskey. To us, to the Congress. And in that respect, we are sitting here, and in any specific case, where any person feels that information is not being furnished, I think we do have the power to compel it. And we certainly have the personal assurance of the President that he will order it released.

Mr. Gilman. Will the gentleman yield? Has that order been made now, Mr. Chairman, that all of the files will be declassified? Have we received notification that that request is being performed?

The Chairman. We have received that information, and the Defense Department is going to brief the White House administrators who sent word down from the President on certain information that they still should be classified, such as a native who is still in Laos and South Vietnam, that his name should not be released. Other than that, I think it will be all declassified—other than protecting a man's life who is still in Vietnam, an American, or Frenchman, or whatever he might be, that his name not be released.

Mr. Gilman. Then that procedure is now underway?

The Chairman. It is underway.

Mrs. Dunn. Can I make just one last statement?

The Chairman. I think the Chairman has been very patient. I haven't asked any questions. And I have only two comments. I believe, Mrs. Dunn, that you said that you could see in certain cases that this committee would recommend presumptive finding of death. I assume you are saying, in which I agree, that some of these cases classified as

The Chairman. In other words, this was a commanding officer who had made this decision, and—

Mrs. Dunn. I think it was terrible. I don't think they were helping. I think it was a horrendous act for them to do that. And that is what I feel strongly. You know, when anybody tells me they did a person a favor, they didn't do them any favor. That was their intent. But it wasn't any favor to do that.

The Chairman. Well, thank you.

Mrs. Hart, we are quite familiar with the Spectrum 17 case. I want to be sure this got on the record and you understood it. We presented that particular case to the Laotians when we were there in December. In fact, Mr. McCloskey volunteered us to go to the site and participate in the inspection. And it was laughed at then, and it was hollow laughter, by the other three. But we face-to-face presented this case of your husband and the other personnel on that aircraft. And so the committee—I guess what I am getting around to, in your statement you said what has the committee done. We have looked them in the eye and gave them that specific case. Now, in other cases we had not. But on your husband's we have done that.

Mrs. Hart. I appreciate your attempts. I got very close myself. Unfortunately they were not any more willing to let me in than they were to let you.

The Chairman. Well, they weren't as belligerent in the years I met with them. In effect, they won it all in Laos. I think they don't know how to handle the situation. That is the feeling we got. They didn't know exactly what to do. I am talking about the new leadership.

Mrs. Hart. Quite frankly, Mr. Montgomery, I feel the day will come, whether it will be during my lifetime or not, I have no idea, when those remains, if in fact they are there, will be recovered. I am not arguing with you about my husband's status or whether the evidence is there or not. Whether it is, whether we get it, in my personal opinion, the law is still inadequate.

The Chairman. Do you have a feeling about your husband on which you would care to comment—

Mrs. Hart. As to his status?

The Chairman. Right—of what his chances of survival are. I have asked this question to everyone. You don't have to answer it.

Mrs. Hart. I don't mind answering you, sir. Quite frankly, I grew up in an airplane; practically. My husband's airplane was fully loaded with fuel and ammunition. They had just started out on a mission. I have illegally perhaps, I am not sure, but in any case, I had access to a recording of—the recording of his aircraft. So I heard the final comments that were made on that airplane. I have little doubt that my husband is dead. That is not the question for me. That is not the reason for my appearance here. I am not fighting to have you declare him alive for the end of time.

The Chairman. I am a little confused—you stated little doubt that—

Mrs. Hart. I cannot say to you I know beyond a shadow of a doubt my husband is dead. You cannot say that to me, either. It is a reason—

door in the front was blocked off with electrical equipment—I think it is reasonable to assume he was dead. I think it was reasonable to assume at the time of the incident that he was dead. The law is still inadequate.

The Chairman. Do you have anything further?

Mrs. Dunn. One point that was brought up to me from the audience that I forgot to mention. Following a review hearing, there is no provision for an appeal of the decision by the review board, as there would be in a civilian court. Also this is contrary to the operation of all other review boards, courts, involving other military reviews, and even courts-martial of military men. They get a chance to appeal it. The new law should provide an appeal to some body outside the military if the next-of-kin desires to do so. You see, there isn't this provision in here.

Mr. Gilman. If the gentleman will yield—

The Chairman. Let me ask Mrs. Bosiljevac. She was going to answer.

Mrs. Bosiljevac. Oh, no, I will wait until she is finished, because she is finished, because she is making a point.

Mr. Gilman. Would the gentleman yield? That is what I was trying to clarify before. Are we asking now for a review of the statute, or a review of the cases or both?

Mrs. Dunn. A review of the statute which again does not give you a chance to review a case. You review a case, but you don't have a chance to appeal the board's decision.

Mr. GILMAN. That is what I am suggesting to you when I ask the question—is this the reform you are asking, an opportunity to review the individual cases by higher authority? The statute now says that the Secretary's findings are conclusive.

Mrs. DUNN. To appeal to somebody outside the military if you want to.

Mr. GILMAN. Pardon?

Mrs. DUNN. If the next of kin desires to do so, that they do have the chance to appeal outside, with an outside body, appeal this review finding, to the military. The military in fact would have to appear in a civilian court.

Mr. GILMAN. Then you are asking for review of the Secretary's determinations.

Mrs. DUNN. Right.

Mr. GILMAN. Thank you.

Mrs. DUNN. The option for it.

The CHAIRMAN. Do you want to speak as to the status of your husband?

Mrs. BOSILJEVAC. With regard to our situation, I feel the situation with the Air Force was that they had so many people MIA, and probably as Maureen mentioned before, we do feel some of them were probably miscarried as MIA. We agree with the services on this. But I do feel that at the end of the war, at the time when my husband was shot down and the B-52 guys and some of these other people were lost, towards the tail end, the policy was not to carry people in a prisoner status, even if it was really close to it, or if there was information available. And I base this on our particular case.

Now, I cannot produce the evidence in front of you obviously. But there is some real question in my mind as to whether my husband was taken prisoner or not. And I have gone through this with some returning prisoners of war, who looked at it and said, "Gee, now I see what you mean, what the problem is here." And also it has been repeated over and over again with regard to Korea. "Look, we presumed all these people dead, and nobody ever came out." Of course not. Why should they let them go if there was some poor unfortunate soul left? It has also been said to me, "If your husband was a mental or physical or basket case, you would not want him back, would you?" Now, I think that is a disgraceful remark.

And I am not suggesting to anyone that we give the Vietnamese what they are asking in return for some perhaps small number of people. I am not suggesting that. I am only asking my Government to tell me the truth. That is all.

The CHAIRMAN. That is what we are trying to do. If there are no further comments or questions, the select committee now stands adjourned.

[Whereupon, at 11:20 a.m., the committee was adjourned.]

APPENDIX

MATERIAL RECEIVED FOR THE RECORD

QUESTIONS SUBMITTED BY MEMBERS OF THE SELECT COMMITTEE TO
Ms. ANITA C. LAUVE

Question. What evidence do you have that the North Vietnamese were interested in the financial benefits that might accrue to them from French remains?

Answer. After the French and the North Vietnamese signed the graves agreement in 1955, they began negotiating the terms of a financial protocol to establish a schedule of charges for graves operations and a system for reimbursing the party performing the work for the benefit of the other party.

During these negotiations, it became evident that the North Vietnamese were already interested in obtaining the maximum amount of remuneration. For example, after it was firmly agreed by both sides that there would be a single fixed price scale for both North and South Vietnam, the North Vietnamese claimed that labor received higher wages in the North, and therefore the price scale for graves services performed for the French in North Vietnam should be higher than for work the French would undertake for the North Vietnamese in South Vietnam.

Aware that the French were eager to begin the regroupment and repatriation of remains, the North Vietnamese refused to sign the protocol until the French agreed to the change.

Over the years, the charges for graves services and the maintenance of French cemeteries in North Vietnam reached the point where they were believed to be at least 20 times the actual costs incurred by the North Vietnamese.

In 1972, there were 12 small French cemeteries in North Vietnam, and one large cemetery under construction. The quarterly bill was 1.5 million U.S. dollars for cemetery maintenance that the French were unable to verify. Observers were rarely permitted to view any cemeteries, and on those few occasions when they were allowed to sight the cemeteries from a distance, found them to be in a poor state of maintenance. The record of the past 22 years leaves little room for doubt that North Vietnam's only interest in the French military graves in North Vietnam, and the remains requested by the families of the deceased is in the economic and political benefits that North Vietnam can derive from control of these remains. Charges are levied for multiple interment, exhumation, and transport.

Question. What is the French policy with regard to status reviews? How long did the French Government hold a person in MIA status?

Answer. According to French sources, in France, a member of the military forces who has been declared missing-in-action remains in that status until the Ministry of Defense determines that there is a sufficient evidence to conclude and the man is dead, or (b) no hard evidence to conclude that he is alive and no reasonable possibility of obtaining additional evidence that would so indicate.

When the Ministry makes a determination of death, it presents the case to the Civil Court in order to obtain the necessary change in civil status that will enable the government to dispense the benefits to which the dependents are entitled. Traditionally, the Civil Courts accept status determinations issued by the Ministry of Defense.

The family of the MIA may challenge the finding of the Ministry of Defense, but the latter's decisions are routinely upheld by the Civil Court.

Question. Did the French ever get an accounting for their missing?

Answer. It has now been 22 years since the end of the French war in Indochina, but the French government has never received a true accounting for its missing personnel.

In response to queries, the North Vietnamese have invariably asserted that they released all prisoners of war in accordance with the terms of the Geneva Agreement, and that any missing personnel whom they have not listed as having rallied to their side should be considered as killed in action or dead as a result of combat wounds.

Question. Did the normalization of French-North Vietnamese relations hasten repatriation of remains and an accounting for the MIA's?

Answer. In the years following conclusion of the graves agreement, there would appear to have been more than coincidental correlation between the number of remains that the French were able to repatriate and the French government's attitude toward Hanoi's political goals in Vietnam, and the latter's escalating charges for graves services on behalf of the French. For example:

Repatriation of French remains during the first two years after the agreement (1955-1956) totalled 1,247. In 1956, the government of South Vietnam called for the withdrawal of all French forces, and, as a result, the French dissolved the High Command of the French Union Forces, terminated its delegation on the Joint Commission responsible for implementing the cease-fire agreement, and rejected any further legal responsibility for implementing the agreement.

Hanoi protested vigorously and refused to convene the Joint Commission, although the French had established a "good-will" mission to the Joint Commission to maintain liaison with the North Vietnamese High Command. In 1957, the number of repatriations dropped to 38.

After waiting for two years for a meeting of the Joint Commission, the French withdrew their goodwill mission in 1958. Hanoi then expelled the last French graves registration officer from North Vietnam, and permitted the repatriation of only 24 remains during the next three years.

In 1962, the North Vietnamese decided to move several French cemeteries at exorbitant cost to the French. When the French balked at the charges, repatriations were terminated.

In 1963, President deGaulle publicly advocated the reunification and neutrality of Vietnam, and strongly opposed foreign intervention. In 1964, France recognized Communist China. The following year, after France refused to sign a SEATO communiqué condemning Communist aggression in South Vietnam, the Saigon government severed diplomatic relations with France.

In 1966, Hanoi succeeded in opening a mission in France similar to the French mission that had been functioning in Hanoi since 1954. In turn, the North Vietnamese allowed the French to send a new Military Graves Mission to Hanoi, as the French had been seeking to do since 1958. The new Graves Mission was able to repatriate 307 remains in 1966.

In 1973, the French resumed diplomatic relations with South Vietnam and, for the first time, established diplomatic relations with Hanoi. There are recent indications (1970) that Hanoi may seek to close down a number of French cemeteries in North Vietnam. Should this occur, there will presumably be thousands of additional remains to be repatriated. At present, the rate of annual repatriations has again dropped: there has been an average of only 26 a year for the past 4 years.

During the 6 years from 1949 to the signing of the graves agreement with North Vietnam in 1955, the French repatriated 9,504 remains. During the 21 years following signature of the agreement, they were able to repatriate only 3,043 remains.

All remains that the French have repatriated were initially buried by the French. The North Vietnamese have never released the remains of any French prisoners who died in prison camps or on the death march to freedom after the ceasefire; nor have they released the remains of any who died at Dien Bien Phu.

The normalization of relations appears to have produced no improvement in the repatriation of remains or the accounting for MIA's.

Question. Describe more fully the treatment of French POW's.

Answer. In remote primitive camps in North Vietnam, where POW's of all nationalities from the French Expeditionary Corps were detained for years, captors showed little interest in keeping them alive for humanitarian reasons or for their potential exchange value at the end of the war.

Their captors were, however, eager to turn them into true Communist believers who would later spread the faith when released. Some of the seeming converts were rewarded by being turned over to French authorities before the end of the war.

In one POW camp for French officers, all prisoners were compelled to attend daily brainwashing sessions and were pressured—through the usual carrot and stick technique—to sign manifestos denouncing the Government of France and the French Army, and praising Ho Chi Minh and his beneficent policies. Failure to cooperate during the brainwashing sessions, and especially any effort to discourage others from cooperating, were severely punished. While the culprits' rations and rest periods were greatly reduced, their workloads were at least tripled. If they succumbed to the many maladies contracted most readily by

given no medical attention, were isolated from fellow prisoners who might help them, and were left to die—and many of them did.

Special punishment for the most recalcitrant prisoners and recaptured escapees was subjection to what was known as the "buffalo treatment": The prisoner was tied at the ankles and elbows to a board that was then placed on the ground in the enclosure where the villagers kept their water buffalos at night. Bites from hordes of insects that surrounded the animals caused unbearable itching. The mud and excrement in which the prisoners lay for as long as one or two months, without ever being released, caused painful, festering sores.

Some prisoners survived, some died while captive, others shortly after release, and some went stark-raving mad.

Even the thousands of wounded and exhausted men captured at the fall of Dien Bien Phu were subjected to diabolical, cleverly planned, and ruthlessly implemented programs of physical deprivation, emotional and mental stress, and constant brainwashing while they followed the long, tortuous, forced march to the points designated for prisoner exchanges in North Vietnam.

Many of these men died en route to freedom. Many of those who walked equally long distances from PW camps near the China border, or from camps in Southern Laos, also died.

Had the North Vietnamese allowed the French to transport these prisoners by plane, helicopter, or even by truck, many would have survived.

Question. Were any French troops captured in Laos? Compared to Vietnam, how many of these men were released?

Answer. Excluding indigenous troops, 13,424 troops from the French Expeditionary Corps were captured in Vietnam, of whom 4,995 were French nationals from metropolitan France. Of the 8,917 released, 2,645 were Frenchmen.

In Laos, approximately 635 French Union troops were captured and released by the North Vietnamese/Pathet Lao forces. According to the International Control Commission, "by and large most of the French nationals seemed to have been released."

Question. I understand that a Vietnamese/French agreement permitted the French to search for grave sites in North Vietnam, and allowed the North Vietnamese to search for grave sites in South Vietnam. What were the results of these searches and how long did they continue?

Answer. On February 1, 1955, the Joint Commission, composed of representatives of the High Commands of the French Union Forces (FUF) and the People's Army of Vietnam (PAVN), signed a graves agreement (Agreement No. 24)¹ to establish the machinery to implement Article 23 of the 1954 Geneva Agreement.

Because the French were unable to persuade South Vietnam to permit PAVN graves teams to enter South Vietnam, it was 11 weeks before the French were allowed to send a team to begin disinterment operations in the French cemetery in Hanoi. The North Vietnamese made it clear that they would not accede to the French request to send two disinterment commissions to Sontay and Hadong to begin disinterment operations until there was reciprocity enabling the PAVN to send search teams to South Vietnam.

The French finally obtained the very reluctant concurrence of the Government of Vietnam (GVN), and on May 9, teams were activated for the first time in both zones.

During the following two months, French operations progressed satisfactorily in North Vietnam, but the PAVN Search Teams in South Vietnam were soon immobilized. Thereafter, the GVN became increasingly nervous about the circulation of uniformed PAVN personnel in South Vietnam who seemed to be interested in matters other than the recovery of remains.

On the very day when the PAVN High Command was complaining to the Joint Commission about its inability to conduct operations in South Vietnam, the GVN arrested the Chief of one of the PAVN Search Teams for contacting local subversive elements. This individual had been a key Viet Minh agent in South Vietnam prior to the ceasefire. In the 1970's this same person was identified as a high-ranking member of the Central Office, South Vietnam (COSVN) which directed activities of the communist National Liberation Front (NLF).

In mid-July, the GVN demanded that all PAVN graves personnel being brought into the South aboard FUF aircraft wear civilian dress and carry GVN safe conduct passes.

¹ See page 191, Central Joint Commission for Vietnam, Agreement No. 24.

When the PAVN refused to accept these conditions, President Diem demanded the withdrawal of all PAVN personnel. To avoid termination of their own operations in the North, the French attempted to find a solution, but by mid-September, all PAVN search teams in South Vietnam had again been immobilized.

During the last three months of 1955, the GVN allowed some PAVN search teams to undertake limited operations when accompanied by GVN personnel. However when the FUF High Command was dissolved in April 1956, following the GVN's request that French troops withdraw from the South, all PAVN personnel, including the Liaison Mission to the International Control Commission and PAVN graves personnel, were flown back to Hanoi and Agreement 24 became a dead letter.

It was not surprising that Agreement 24 collapsed as it did, for it went far beyond the commitments made in the Geneva Agreement. The latter provided for entry of one party into the zone of the other party "when the place of burial is known and the existence of graves has been established". Whereas Agreement 24 enabled the party to furnish the other side with lists of graves and, if these could not be found, to send in search teams to all localities listed.

The PAVN tried to take full advantage of this opportunity: The information it gave the FUF was generally so inadequate and inaccurate as to make it extremely difficult for the French to locate the graves.

On a number of occasions, the North Vietnamese revealed their real objective (to circulate widely in South Vietnam). For example, they asked the French to list only those graves on the PAVN search request that they had not been able to locate. They also said they were not interested in any PAVN graves that the French located but which were not on the PAVN lists.

The PAVN rejected the French suggestion that they begin disinterment after many graves had been found, contending that they would do so only when all graves had been found in all the provinces on their list. There is, in fact, no evidence that the PAVN undertook any disinterment operations during the months they were in the South. Instead, they repeatedly sought to activate as many as 10 search teams simultaneously.

Agreement 24 also provided for a number of cemeteries of each party in the zone controlled by the other, whereas the Geneva Agreement made no provision for the establishment of new cemeteries.

But the greatest weakness was the fact that Agreement 24 repeatedly placed the responsibility for implementing the Agreement on the contracting parties in the zone under their control. Insofar as South Vietnam was concerned, this was a contradiction in terms because the French High Command was the contracting party whereas the South Vietnamese government was the party administering the zone, and it had signed neither the Geneva Agreement nor Agreement 24.

PREPARED STATEMENT OF ANITA LAUVE

Mr. Chairman and Members of the Select Committee, I am very pleased to appear before you today and hope that my testimony will assist you in the difficult task in which you are involved.

My presentation will examine the highlights of the French experience in recovering their prisoners of war, in obtaining an accounting for the missing in action, and in recovering and repatriating the remains of their men who died in combat or in captivity. For this purpose, I ask the permission of the Select Committee to introduce supporting documents for the record.

Before examining the French experience, it would seem useful to consider some of the major differences and similarities between the French and the American war. The areas of combat and the type of warfare, the composition of the armed forces, the bargaining power of the adversaries and their dissimilar set of values, were all factors that affected, in one way or another, the numbers of killed in action, missing in action, prisoners of war, died in captivity, and bodies recovered.

Some of those factors also contributed to the substantial difference between the ability of the French and the U.S. Commands to account for their respective casualties.

In both the French and the American war, the fighting was a combination of guerrilla and conventional warfare; however, the emphasis on each and the level of combat differed significantly.

Although guerrilla warfare predominated initially in both conflicts, Americans tended to engage in brief forays from which they were usually able to recover their wounded and dead before returning to their base. The French, on the other hand, often operated for long periods far behind enemy lines in the plateau regions and near the China border, where many were trapped by the cease fire.

Fighting in the French war was predominantly ground combat. It ranged from the China border to the southern tip of Vietnam and into Laos and Cambodia. Though the troops had air support throughout the area, it was insufficient even by the standards of the day, and certainly the French had none of the sophisticated means of preventing capture or ensuring early retrieval of the wounded and the recovery of the dead that U.S. forces later possessed.

In the American conflict, guerrilla fighting was rapidly overshadowed by conventional warfare as both sides introduced a larger number of conventional forces and weapons into South Vietnam.

Because there were far more American nationals fighting in the American war than there were French nationals fighting in their war, the number of Americans killed in action was about *four times* that of the French, but the number of Americans missing in action was a *third less*. This may be attributed to the fact that American ground troops were operating in a much smaller area of Indochina than were the French, and, as mentioned earlier, enjoyed superior air power.

The French figure of missing in action was, however, greatly affected by the lack of knowledge concerning the fate of hundreds of their prisoners of war held in remote, primitive camps in North Vietnam. A French officer, four years a captive in one such camp near the China border, told me that 50 to 70 percent of the prisoners died in the camp, or on what proved to be a 600 kilometer death march to the point of release after the cease fire.

About a year after the 1954 cease fire, over 21,000 men of all nationalities in the French Union ground forces were listed as "missing or failed to return from captivity".

There seemed to be less uncertainty about Air Force personnel, for they were listed either as killed in action or, "died of wounds or disease or missing, presumed dead." There seemed to be no assumption, as there was with respect to missing ground personnel, that the Air Force men may simply have failed to return from captivity.

Here, of course, the French had a decided advantage over the Americans in attempting to account for their missing Air Force personnel. Throughout their war, the French had ground, air, and naval forces in North Vietnam and many friendly native contacts. Furthermore, they were able to remain in the north for 300 days after the cease fire. Consequently, they had opportunities to rescue crews of planes downed during the war, obtain information about the fate of others in captivity, and recover the remains of at least some of the deceased.

By contrast, the Americans had no ground presence in North Vietnam during the war and could expect no friendly assistance from the inhabitants. As a result, the largest number of Americans missing in Vietnam are air personnel. Now the United States must rely solely on the willingness of the North Vietnamese Government to account for the missing and to recover the remains of Americans who died in North Vietnam.

It therefore seems relevant to examine North Vietnam's record in implementing the terms of the Geneva Agreement of 1954 with regard to the release of prisoners, accounting for the missing, and facilitating the repatriation of the remains of the deceased.

By September 9, 1954, the deadline for the release of all prisoners in Vietnam, the Vietnamese had returned about one-third of the prisoners of war claimed by the French.

About six weeks later, after all French forces had withdrawn from Hanoi, the French reduced their initial POW claims from over 30,000 to under 23,000, possibly for two reasons:

(1) Information acquired from returned prisoners concerning the number of those unaccounted for, and

(2) Recognition of the fact that many troops of North Vietnamese origin who had been fighting with the French forces, had defected to the Viet Minh, while others had gone AWOL to help their families join the growing tide of refugees heading for South Vietnam.

By the end of 1954, the French Command had received 13,000 prisoners of war, but accused the North Vietnamese of withholding 9,500.

Although the North Vietnamese denied at the time holding prisoners of war, during the next two years they turned over to the French Command three groups of alleged ralliers, totaling 380 men. A "rallier" is a term used by the North Vietnamese to describe a defector from the other side, and the Vietnamese drew a marked distinction between POW's and ralliers.

During the same period, North Vietnamese troops escorted three groups of Foreign Legionnaires (over 450 men) across the China border under the eyes of the International Control Commission, to be repatriated to Central and Eastern European countries then under communist control. These figures appear in the published reports of the International Control Commission.

Reliable Western sources in North Vietnam at the time reported that the North Vietnamese also escorted hundreds of Legionnaires across the China border without notifying the International Control Commission or the French High Command, to whom they should have been released, according to the Geneva Agreement.

During the 1960's and early 1970's, the North Vietnamese released several hundred North Africans, and well over a hundred Europeans, notably Spaniards and Italians, who were repatriated to their countries of origin. Whether these men had remained in North Vietnam voluntarily is not known, but in some instances, there were indications to the contrary.

It is important to note that all of these Legionnaires were not Frenchmen, but rather were East Europeans, or Slavic and there is no parallel in the American experience.

The only French nationals from metropolitan France who are known to have been belatedly returned to French authorities, were 40 enlisted men released and flown to France, with their Vietnamese families, in 1962. Some, if not all of the men, were tried in France as deserters.

Over the years, the French continued to try and obtain information from Hanoi about the fate of their missing in action. In the late 1960's, in response to a query from a member of the French legislative branch, the responsible French Government agency reported that past search requests addressed to the Government of North Vietnam produced no results because the North Vietnamese replied that all prisoners of war had been liberated, in implementation of clauses of the Geneva Agreements, and that those who were missing, and who did not appear as "ralliers", should be considered "killed in combat, or deceased as a result of injuries received in combat".

It should be noted that the Paris Peace Accords of 1973 specifically stated that even those who had been tried and sentenced as criminals were to be returned. I understand that the United States Government has no evidence that any Americans are being held by the Vietnamese in a war criminal status, but that there are at least two known cases of Americans who defected to the Vietnamese who may still be alive and these were mentioned by General Vernon Walters of the CIA, in his testimony before the Select Committee.

Several years later, the French Foreign Minister, responding to a question in the National Assembly in June of 1971, asserted that statements according to which a certain number of French prisoners of war were kept by the Government of the Democratic Republic of Vietnam, after execution of the Geneva Accords of 1954, did not correspond to the French Government's information. He further stated that to the Government's knowledge there were, as a matter of fact, no members of the French Far East Expeditionary Corps held "against their will in North Vietnam."

These last two statements would seem to indicate that insofar as the French Government, and the North Vietnamese Government are concerned, the question of prisoners of war is a closed issue.

Not so with respect to the search-and-recovery and repatriation of the remains of French military personnel killed in action in North Vietnam. Based on published reports of widely-spaced shipments of French remains from Hanoi to France, and on information gleaned over the years from non-French sources in Hanoi sympathetic to the French Government's dilemma, the issue of the recovery of French remains is far from resolved.

I would like to note a major difference between the situation of the French and the Americans with regard to the search-and-recovery operations. The Americans were not present in North Vietnam during or after their war. The fact that the French fought in the North enabled them to bury most of their dead, except those who died in remote areas or in the prison camps, or enroute to freedom. Thus, they were aware of the burial sites of most of their deceased

military men, whereas the Americans had no first-hand knowledge of the location of existing graves and had no permanent cemeteries at all.

The common experiences that the French and Americans share is first, the inability to conduct search operations in North Vietnam, (even the French are not presently involved in these operations), and second, the obvious interest of the Government of North Vietnam to make the return of remains of the deceased contingent upon substantial remuneration to North Vietnam.

Their protestations to the contrary, a review of how the North Vietnamese have dealt with the French on the recovery and repatriation issue over the past 20 years, dispels any illusion that they have been motivated by humanitarian concern for the families of the deceased.

As indicated in the earlier portion of this presentation, both the Americans and the French know how the Government of North Vietnam implements mutual agreements on the release of POW's. But, to date, only the French have had substantial experience in how the North Vietnamese implement a mutual agreement specifically designed to cover search-and-recovery operations.

In view of the fact that North Vietnam does not at present need authorization to recover bodies of its deceased military personnel located in South Vietnam, and in light of mutual commitments already made by the Government of the United States and the Democratic Republic of Vietnam, there should be no need for an additional agreement, (such as the French Agreement 24), in order for the North Vietnamese to fulfill their commitment with respect to Article 8b of the Paris Agreement.

Nonetheless, in view of the continuing refusal of the North Vietnamese to fulfill their commitment with regard to the recovery and repatriation of the remains of Americans missing in North Vietnam, it may be of particular interest to examine their record in dealing with the French on this issue during the past 20 years.

The Geneva Agreement required the Commander of the forces of each party to permit the graves service personnel of the other party to enter territory under his military control for the purpose of finding and removing the remains of deceased military personnel of their own side—including the bodies of deceased prisoners of war.

To fulfill this obligation, the Central Joint Commission formed a Joint Graves Committee to negotiate the terms of a search-and-recover agreement. The result of this committee's negotiations produced Agreement 24, six months after the ceasefire. The text of this agreement will be made a part of the record, but I have not had access to the record of the negotiations that led to conclusion of the agreement. From all indications, however, the negotiations were at least as difficult as those that lead to conclusion of three subsequent agreements on financial arrangements, costs, and shipping, that were necessary to implement the graves agreement.

Shortly after conclusion of the graves agreement, it became apparent that the objectives of the North Vietnamese in undertaking search-and-recovery operations in South Vietnam were totally different from the French objectives in North Vietnam, and certainly bore no relationship to the intent of the relevant article in the Geneva Agreement. For example, the manner in which the North Vietnamese submitted their search-requests to the French were clearly designed to make it extremely difficult for the French to locate the graves in South Vietnam. Thus, in accordance with the graves agreement, the North Vietnamese would be entitled to send search teams into the South. The record of the negotiating in the Joint Graves Committee reveals their objective was to send as many teams as possible, into as many provinces as possible, during the year preceding the anticipated all-Vietnam elections.

Hanoi's political interest in the graves operation was further revealed when some of the officers in charge of the North Vietnamese search-and-recovery teams proved to be former high-ranking South Vietnamese Communist-political cadres, who had gone North before the cease fire, or had withdrawn with the North Vietnamese forces after the cease fire. These officers proved to be more interested in establishing contact with local Viet Minh elements than in recovering and repatriating the remains of their deceased whose graves the French had located. In fact, when the French pointed out that they had located 30% of the graves on North Vietnam's list, the North Vietnamese, having long protested because their teams had been unable to begin disinterments in South Vietnam as early as the French in North Vietnam, then announced they would not begin any disinterments until all graves had been located throughout South Vietnam.

Taking this position meant that North Vietnamese teams would be able to circulate in South Vietnam for several months to locate graves; then their Disinterment Commissions could visit the same provinces to determine what should be done about each grave; and finally a third commission, The Visit Commission, could return a third time to the same areas, to ascertain whether the requested repairs and grave markers had been properly handled.

In contrast to North Vietnam's use of graves operations in South Vietnam, which was primarily for political purposes, French operations in North Vietnam were directed solely toward the recovery, identification, regrouping and repatriation of remains. Except for graves located near remote prisoner of war camps, and the many graves dotting the routes of the death march to freedom, the great majority of French graves were in well-defined temporary or permanent cemeteries, where most graves could readily be identified.

The North Vietnamese had a special interest in the French graves operations in the North, but it became evident during the negotiations that this special interest was not of a humanitarian nature. It was evident in the sessions of the Joint Graves Committee that the Government of North Vietnam saw the possibility of financially benefiting from the French graves operations.

During the years that followed, it became painfully evident that the program for the recovery of the remains of French military personnel buried in North Vietnam has become a long-term source of income for the Government of the Democratic Republic of Vietnam. For conditions attached to continuation of the program, and the costs involved have continued to escalate over the years in an unpredictable and unreasonable manner.

Exactly what these costs and conditions are, we do not know, because, as in the case of the French prisoners of war and missing in action, the French Government has chosen quiet diplomacy in its negotiations with the North Vietnamese in the hope of eventually achieving its goals.

CONCLUSION

What has been the record to date? In 1955, during the first six months following signature of the Graves Agreement, the French were able to repatriate 150 bodies disinterred from existing French cemeteries in North Vietnam. But a year later, the President of South Vietnam ordered all North Vietnamese Search Teams out of the South because Hanoi rejected his repeated demands that the officers wear civilian dress. The North Vietnamese allowed French graves personnel to continue operations in North Vietnam, but on an ever decreasing scale. In 1958, they expelled the last French officer connected with the graves search-and-recovery program and ended repatriations in 1962.

Negotiations did not resume until 4 years later. In 1966, the French were permitted to make another out-shipment of remains to France. Between 1966 and 1970, there were several additional out-shipments, bringing the total to 3,043 in over 20 years. During this period, the French consistently had official representation in Hanoi.

It should be noted that all bodies recovered and repatriated by the French had been buried by the French, in French cemeteries in North Vietnam. The locations of these remains were thus well-known to the French.

Also worth noting, is the fact that of all those repatriated, there were none who had been listed as missing-in-action or died-in-captivity.

This is not an encouraging record, but it is the record.

AGREEMENT ON THE CESSATION OF HOSTILITIES IN CAMBODIA, JULY 20, 1954

CHAPTER I. PRINCIPLES AND CONDITIONS GOVERNING EXECUTION OF THE CEASE-FIRE

ARTICLE 1

As from twenty-third July, 1954, at 0800 hours (Peking mean time) complete cessation of all hostilities throughout Cambodia shall be ordered and enforced by the Commanders of the Armed Forces of the two parties for all troops and personnel of the land, naval and air forces under their control.

ARTICLE 2

In conformity with the principle of a simultaneous cease-fire throughout Indo-China, there shall be a simultaneous cessation of hostilities throughout Cambodia, in all the combat areas and for all the forces of the two parties.

To obviate any mistake or misunderstanding and to ensure that both the ending of hostilities and all other operations arising from cessation of hostilities are in fact simultaneous,

(a) Due allowance being made for the time actually required for transmission of the cease-fire order down to the lowest echelons of the combatant forces of both sides, the two parties are agreed that the complete and simultaneous cease-fire throughout the territory of Cambodia shall become effective at 8 hours (local time) on August 7, 1954. It is agreed that Peking mean time shall be taken as local time.

(b) Each side shall comply strictly with the time-table jointly agreed upon between the parties for the execution of all operations connected with the cessation of hostilities.

ARTICLE 3

All operations and movements connected with the execution of the cessation of hostilities must be carried out in a safe and orderly fashion.

(a) Within a number of days to be determined by the Commanders of both sides, after the cease-fire has been achieved, each party shall be responsible for removing and neutralising mines, booby traps, explosives and any other dangerous devices placed by it. Should it be impossible to complete removal and neutralisation before departure, the party concerned will mark the spot by placing visible signs. Sites thus cleared of mines and any other obstacles to the free movement of the personnel of the International Commission and the Joint Commission shall be notified to the latter by the local military Commanders.

(b) Any incidents that may arise between the forces of the two sides and may result from mistakes or misunderstandings shall be settled on the spot so as to restrict their scope.

(c) During the days immediately preceding the cease-fire each party undertakes not to engage in any large-scale operation between the time when the Agreement on the cessation of hostilities is signed at Geneva and the time when the cease-fire comes into effect.

CHAPTER II. PROCEDURE FOR THE WITHDRAWAL OF THE FOREIGN ARMED FORCES AND FOREIGN MILITARY PERSONNEL FROM THE TERRITORY OF CAMBODIA

ARTICLE 4

(1) The withdrawal outside the territory of Cambodia shall apply to—

(a) The armed forces and military combatant personnel of the French Union;
(b) The combatant formations of all types which have entered the territory of Cambodia from other countries or regions of the peninsula; and
(c) All the foreign elements (or Cambodians not natives of Cambodia) in the military formations of any kind or holding supervisory functions in all political or military, administrative, economic, financial or social bodies, having worked in liaison with the Viet Nam military units.

(2) The withdrawals of the forces and elements referred to in the foregoing paragraphs and their military supplies and materials must be completed within 90 days reckoning from the entry into force of the present Agreement.

(3) The two parties shall guarantee that the withdrawals of all the forces will be effected in accordance with the purposes of the Agreement, and that they will not permit any hostile action or take any action likely to create difficulties for such withdrawals. They shall assist one another as far as possible.

(4) While the withdrawals are proceeding, the two parties shall not permit any destruction or sabotage of public property or any attack on the life or property of the civilian population. They shall not permit any interference with the local civil administration.

(5) The Joint Commission and the International Supervisory Commission shall supervise the execution of measures to ensure the safety of the forces during withdrawal.

(6) The Joint Commission in Cambodia shall determine the detailed procedures for the withdrawals of the forces on the basis of the above-mentioned principles.

CHAPTER III. OTHER QUESTIONS.

A. The Khmer Armed Forces, Natives of Cambodia

ARTICLE 5

The two parties shall undertake that within thirty days after the cease-fire order has been proclaimed, the Khmer Resistance Forces shall be demobilised on the spot; simultaneously, the troops of the Royal Khmer Army shall abstain from taking any hostile action against the Khmer Resistance Forces.

ARTICLE 6

The situation of these nationals shall be decided in the light of the Declaration made by the Delegation of Cambodia at the Geneva Conference, reading as follows:

"The Royal Government of Cambodia,

In the desire to ensure harmony and agreement among the peoples of the Kingdom,

Declares itself resolved to take the necessary measures to integrate all citizens, without discrimination, into the national community and to guarantee them the enjoyment of the rights and freedoms for which the Constitution provides;

Affirms that all Cambodian citizens may freely participate as electors or candidates in general elections by secret ballot."

No reprisals shall be taken against the said nationals or their families, each national being entitled to the enjoyment, without any discrimination as compared with other nationals, of all constitutional guarantees concerning the protection of person and property and democratic freedoms.

Applicants therefor may be accepted for service in the Regular Army or local police formations if they satisfy the conditions required for current recruitment of the Army and Police Corps.

The same procedure shall apply to those persons who have returned to civilian life and who may apply for civilian employment on the same terms as other nationals.

B. Ban on the Introduction of Fresh Troops, Military Personnel, Armaments and Munitions—Military Bases

ARTICLE 7

In accordance with the Declaration made by the Delegation of Cambodia at 2400 hours on July 20, 1954 at the Geneva Conference of Foreign Ministers:

"The Royal Government of Cambodia will not join in any agreement with other States if this agreement carries for Cambodia the obligation to enter into a military alliance not in conformity with the principles of the Charter of the United Nations, or, as long as its security is not threatened, the obligation to establish bases on Cambodian territory for the military forces of foreign Powers.

"During the period which will elapse between the date of the cessation of hostilities in Viet Nam and that of the final settlement of political problems in this country, the Royal Government of Cambodia will not solicit foreign aid in war material, personnel or instructors except for the purpose of the effective defense of the territory."

C. Civilian Internees and Prisoners of War—Burial

ARTICLE 8

The liberation and repatriation of all civilian internees and prisoners of war detained by each of the two parties at the coming into force of the present Agreement shall be carried out under the following conditions:

(a) All prisoners of war and civilian internees of whatever nationality, captured since the beginning of hostilities in Cambodia during military operations or in any other circumstances of war and in any part of the territory of Cambodia shall be liberated after the entry into force of the present Armistice Agreement.

(b) The term "civilian internees" is understood to mean all persons who, hav-

ing in any way contributed to the political and armed struggle between the two parties have been arrested for that reason or kept in detention by either party during the period of hostilities.

(c) All foreign prisoners of war captured by either party shall be surrendered to the appropriate authorities of the other party, who shall give them all possible assistance in proceeding to the destination of their choice.

ARTICLE 9

After the entry into force of the present Agreement, if the place of burial is known and the existence of graves has been established, the Cambodian commander shall, within a specified period, authorise the exhumation and removal of the bodies of deceased military personnel of the other party, including the bodies of prisoners of war or personnel deceased and buried on Cambodian territory.

The Joint Commission shall fix the procedures by which this task is to be carried out and the time limit within which it must be completed.

CHAPTER IV. JOINT COMMISSION AND INTERNATIONAL COMMISSION FOR SUPERVISION AND CONTROL IN CAMBODIA

ARTICLE 10

Responsibility for the execution of the Agreement on the cessation of hostilities shall rest with the parties.

ARTICLE 11

An International Commission shall be responsible for control and supervision of the application of the provisions of the Agreement on the cessation of hostilities in Cambodia. It shall be composed of representatives of the following States: Canada, India and Poland. It shall be presided over by the representative of India. Its headquarters shall be at Phnom-Penh.

ARTICLE 12

The International Commission shall set up fixed and mobile inspection teams, composed of an equal number of officers appointed by each of the above-mentioned states.

The fixed teams shall be located at the following points: Phnom-Penh, Kompong-Cham, Kratie, Svay-Rieng, Kampot. These points of location may be altered at a later date by agreement between the Government of Cambodia and the International Commission.

The zones of action of the mobile teams shall be the regions bordering on the land and sea frontiers of Cambodia. The mobile teams shall have the right to move freely within the limits of their zones of action, and they shall receive from the local civil and military authorities all facilities they may require for the fulfilment of their tasks (provision of personnel, access to documents needed for supervision, summoning of witnesses needed for enquiries, security and freedom of movement of the inspection teams, etc.). They shall have at their disposal such modern means of transport, observation and communication as they may require.

Outside the zones of action defined above, the mobile teams may with the agreement of the Cambodian Command, move about as required by the tasks assigned to them under the present Agreement.

ARTICLE 13

The International Commission shall be responsible for supervising the execution by the parties of the provisions of the present Agreement. For this purpose it shall fulfil the functions of control, observation, inspection and investigation connected with the implementation of the provisions of the Agreement on the cessation of hostilities, and shall in particular:

(a) Control the withdrawal of foreign forces in accordance with the provisions of the Agreement on the cessation of hostilities and see that frontiers are respected;

(b) Control the release of prisoners of war and civilian internees; and

(c) Supervise, at ports and airfields and along all the frontiers of Cambodia, the application of the Cambodian declaration concerning the introduction into

Cambodia of military personnel and war materials on grounds of foreign assistance.

ARTICLE 14

A Joint Commission shall be set up to facilitate the implementation of the clauses relating to the withdrawal of foreign forces.

The Joint Commission may form joint groups the number of which shall be decided by mutual agreement between the parties.

The Joint Commission shall facilitate the implementation of the clauses of the Agreement on the cessation of hostilities relating to the simultaneous and general cease-fire in Cambodia for all regular and irregular armed forces of the two parties.

It shall assist the parties in the implementation of the said clauses; it shall ensure liaison between them for the purpose of preparing and carrying out plans for the implementation of the said clauses; it shall endeavour to settle any disputes between the parties arising out of the implementation of these clauses. The Joint Commission may send joint groups to follow the forces in their movements; such groups shall be disbanded once the withdrawal plans have been carried out.

ARTICLE 15

The Joint Commission shall be composed of an equal number of representatives of the Commands of the parties concerned.

ARTICLE 16

The International Commission shall, through the medium of the inspection teams mentioned above and as soon as possible, either on its own initiative or at the request of the Joint Commission or of one of the parties, undertake the necessary investigations both documentary and on the grounds.

ARTICLE 17

The inspection teams shall transmit to the International Commission the results of their supervision, investigations and observations; furthermore, they shall draw up such special reports as they may consider necessary or as may be requested from them by the Commission. In the case of a disagreement within the teams, the findings of each member shall be transmitted to the Commission.

ARTICLE 18

If an inspection team is unable to settle an incident or considers that there is a violation or threat of a serious violation, the International Commission shall be informed; the Commission shall examine the reports and findings of the inspection teams and shall inform the parties of the measures to be taken for the settlement of the incident, ending of the violation or removal of the threat of violation.

ARTICLE 19

When the Joint Commission is unable to reach agreement on the interpretation of a provision or on the appraisal of a fact, the International Commission shall be informed of the disputed question. Its recommendations shall be sent directly to the parties and shall be notified to the Joint Commission.

ARTICLE 20

The recommendations of the International Commission shall be adopted by a majority vote, subject to the provisions of Article 21. If the votes are equally divided, the Chairman's vote shall be decisive.

The International Commission may make recommendations concerning amendments and additions which should be made to the provisions of the Agreement on the cessation of hostilities in Cambodia, in order to ensure more effective execution of the said Agreement. These recommendations shall be adopted unanimously.

ARTICLE 21

On questions concerning violations, or threats of violations, which might lead to a resumption of hostilities, and in particular,

(a) Refusal by foreign armed forces to effect and movements provided for in the withdrawal plan, and

(b) Violation or threat of violation of the country's integrity by foreign armed forces,

the decisions of the International Commission must be unanimous.

ARTICLE 22

If one of the parties refuses to put a recommendation of the International Commission into effect, the parties concerned or the Commission itself shall inform the members of the Geneva Conference.

If the International Commission does not reach unanimity in the cases provided for in Article 21, it shall transmit a majority report and one or more minority reports to members of the Conference.

The International Commission shall inform the members of the Conference of all cases in which its work is being hindered.

ARTICLE 23

The International Commission shall be set up at the time of the cessation of hostilities in Indo-China in order that it may be able to perform the tasks prescribed in Article 13.

ARTICLE 24

The International Commission for Supervision and Control in Cambodia shall act in close cooperation with the International Commissions in Viet Nam and Laos.

The Secretaries-General of these three Commissions shall be responsible for coordinating their work and for relations between them.

ARTICLE 25

The International Commission for Supervision and Control in Cambodia may, after consultation with the International Commissions in Viet Nam and in Laos, and having regard to the development of the situation in Viet Nam and in Laos, progressively reduce its activities. Such a decision must be adopted unanimously.

CHAPTER V. IMPLEMENTATION

ARTICLE 26

The Commanders of the forces of the two parties shall ensure that persons under their respective commands who violate any of the provisions of the present Agreement are suitably punished.

ARTICLE 27

The present Agreement on the cessation of hostilities shall apply to all the armed forces of either party.

ARTICLE 28

The Commanders of the forces of the two parties shall afford full protection and all possible assistance and cooperation to the Joint Commission and to the International Commission and its inspection teams in the performance of their functions.

ARTICLE 29

The Joint Commission, composed of an equal number of representatives of the Commands of the two parties, shall assist the parties in the implementation of all the clauses of the Agreement on the cessation of hostilities, ensure liaison between the two parties, draw up plans for the implementation of the Agreement, and endeavour to settle any dispute arising out of the implementation of the said clauses and plans.

ARTICLE 30

The costs involved in the operation of the Joint Commission shall be shared equally between the two parties.

ARTICLE 31

The signatories of the present Agreement on the cessation of hostilities and their successors in their functions shall be responsible for the observance and enforcement of the terms and provisions thereof. The Commanders of the forces of the two parties shall, within their respective commands, take all steps and make all arrangements necessary to ensure full compliance with all the provisions of the present Agreement by all personnel under their command.

ARTICLE 32

The procedures laid down in the present Agreement shall, whenever necessary, be examined by the Commands of the two parties and, if necessary, defined more specifically by the Joint Commission.

ARTICLE 33

All the provisions of the present Agreement shall enter into force at 00 hours (Geneva time) on July 23, 1954.

Done at Geneva on July 20, 1954.

For the Commander-in-Chief of the Khmer National Armed Forces:

NHIEK TIOULONG, *General*.

For the Commander-in-Chief of the Units of the Khmer Resistance Forces and for the Commander-in-Chief of the Vietnamese Military Units:

TA-QUANG-BUU,
*Vice-Minister of National Defense
of the Democratic Republic of Viet Nam.*

AGREEMENT ON THE CESSATION OF HOSTILITIES IN LAOS,¹ JULY 20, 1954

CHAPTER I. CEASE-FIRE AND EVACUATION OF FOREIGN ARMED FORCES AND FOREIGN MILITARY PERSONNEL

ARTICLE 1

The Commanders of the armed forces of the parties in Laos shall order and enforce the complete cessation of all hostilities in Laos by all armed forces under their control, including all units and personnel of the ground, naval and air forces.

ARTICLE 2

In accordance with the principle of a simultaneous cease-fire throughout Indo-China the cessation of hostilities shall be simultaneous throughout the territory of Laos in all combat areas and for all forces of the two parties.

In order to prevent any mistake or misunderstanding and to ensure that both the cessation of hostilities and the disengagement and movements of the opposing forces are in fact simultaneous:

(a) Taking into account the time effectively required to transmit the cease-fire order down to the lowest echelons of the combatant forces on both sides, the two parties are agreed that the complete and simultaneous cease-fire throughout the territory of Laos shall become effective at 8 hours (local time) on August 6, 1954. It is agreed that Peking mean time shall be taken as local time.

(b) The Joint Commission for Laos shall draw up a schedule for the other operations resulting from the cessation of hostilities.

ARTICLE 3

All operations and movements entailed by the cessation of hostilities and regroupings must proceed in a safe and orderly fashion.

¹ Miscellaneous No. 20 (1954), Further Documents Relating to the Discussion of Indo-China at the Geneva Conference, June 16-July 21, 1954, Cmd. 9239 (London: HMSO, August 1954).

(a) Within a number of days to be determined on the spot by the Joint Commission in Laos each party shall be responsible for removing and neutralizing mines, booby traps, explosives and any other dangerous substance placed by it. In the event of its being impossible to complete the work of removal and neutralization in time, the party concerned shall mark the spot by placing visible signs there.

(b) As regards the security of troops on the move following the lines of communication in accordance with the schedule previously drawn up by the Joint Armistice Commission in Laos, and the safety of the assembly areas, detailed measures shall be adopted in each case by the Joint Armistice Commission in Laos. In particular, while the forces of one party are withdrawing by a line of communication passing through the territory of the other party (roads or waterways) the forces of the latter party shall provisionally withdraw two kilometers on either side of such line of communication, but in such a manner as to avoid interfering with the movements of the civil population.

ARTICLE 4

The withdrawals and transfers of military forces, supplies and equipment shall be effected in accordance with the following principles:

(a) The withdrawals and transfers of the military forces, supplies and equipment of the two parties shall be completed within a period of 120 days from the day on which the present Agreement enters into force. The two parties undertake to communicate their transfer plans to each other, for information, within 25 days of the entry into force of the present Agreement.

(b) The withdrawals of the Vietnamese People's Volunteers from Laos to Viet Nam shall be effected by provinces. The position of those volunteers who were settled in Laos before the hostilities shall form the subject of a special convention.

(c) The routes for the withdrawal of the forces of the French Union and Vietnamese People's Volunteers in Laos from Laotian territory shall be fixed on the spot by the Joint Commission.

(d) The two parties shall guarantee that the withdrawals and transfers of all forces will be effected in accordance with the purposes of this Agreement, and that they will not permit any hostile action or take action of any kind whatever which might hinder such withdrawals or transfers. The parties shall assist each other as far as possible.

(e) While the withdrawals and transfers of the forces are proceeding, the two parties shall not permit any destruction or sabotage of any public property or any attack on the life or property of the local civilian population.

(f) The Joint Commission and the International Commission shall supervise the implementation of measures to ensure the safety of the forces during withdrawal and transfer.

(g) The Joint Commission in Laos shall determine the detailed procedures for the withdrawals and transfers of the forces in accordance with the above-mentioned principles.

ARTICLE 5

During the days immediately preceding the cease-fire each party undertakes not to engage in any large-scale operation between the time when the Agreement on the cessation of hostilities is signed at Geneva and the time when the cease-fire comes into effect.

CHAPTER II. PROHIBITION OF THE INTRODUCTION OF FRESH TROOPS, MILITARY PERSONNEL, ARMAMENTS AND MUNITIONS

ARTICLE 6

With effect from the proclamation of the cease-fire the introduction into Laos of any reinforcements of troops or military personnel from outside Laotian territory is prohibited.

Nevertheless, the French High Command may leave a specified number of French military personnel required for the training of the Laotian National Army in the territory of Laos; the strength of such personnel shall not exceed one thousand five hundred (1,500) officers and non-commissioned officers.

ARTICLE 7

Upon the entry into force of the present Agreement, the establishment of new military bases is prohibited throughout the territory of Laos.

ARTICLE 8

The High Command of the French forces shall maintain in the territory of Laos the personnel required for the maintenance of two French military establishments, the first at Seno and the second in the Mekong valley, either in the province of Vientiane or downstream from Vientiane.

The effectives maintained in these military establishments shall not exceed a total of three thousand five hundred (3,500) men.

ARTICLE 9

Upon the entry into force of the present Agreement and in accordance with the declaration made at the Geneva Conference by the Royal Government of Laos on July 20, 1954, the introduction into Laos of armaments, munitions and military equipment of all kinds is prohibited, with the exception of a specified quantity of armaments in categories specified as necessary for the defense of Laos.

ARTICLE 10

The new armaments and military personnel permitted to enter Laos in accordance with the terms of Article 9 above shall enter Laos at the following points only: Luang-Prabang, Xieng-Khouang, Vientiane, Seno, Pakse, Savannakhet and Tchepone.

CHAPTER III. DISENGAGEMENT OF THE FORCES—ASSEMBLY AREAS—CONCENTRATION AREAS

ARTICLE 11

The disengagement of the armed forces of both sides, including concentration of armed forces, movements to rejoin the provisional assembly areas allotted to one party and provisional withdrawal movements by the other party, shall be completed within a period not exceeding fifteen (15) days after the cease-fire.

ARTICLE 12

The Joint Commission in Laos shall fix the site and boundaries:

Of the five (5) provisional assembly areas for the reception of the Vietnamese People's Volunteer Forces,

Of the five (5) provisional assembly areas for the reception of the French forces in Laos,

Of the twelve (12) provisional assembly areas, one to each province, for the reception of the fighting units of "Pathet Lao."

The forces of the Laotian National Army shall remain *in situ* during the entire duration of the operations of disengagement and transfer of foreign forces and fighting units of "Pathet Lao."

ARTICLE 13

The foreign forces shall be transferred outside Laotian territory as follows:

(1) *French Forces*.—The French forces shall be moved out of Laos by road (along routes laid down by the Joint Commission in Laos) and also by air and inland waterway;

(2) *Vietnamese People's Volunteer Forces*.—These forces shall be moved out of Laos by land, along routes and in accordance with a schedule to be determined by the Joint Commission in Laos in accordance with the principle of simultaneous withdrawal of foreign forces.

ARTICLE 14

Pending a political settlement, the fighting units of "Pathet Lao," concentrated in the provisional assembly areas, shall move into the Provinces of Phongsaly and Sam-Neua, except for any military personnel who wish to be

demobilised where they are. They shall be free to move between these two Provinces in a corridor along the frontier between Laos and Viet Nam bounded on the south by the Line Sop Kin, Na Mi, Sop Sang, Muong Son.

Concentration shall be completed within one hundred and twenty (120) days from the date of entry into force of the present Agreement.

ARTICLE 15

Each party undertakes to refrain from any reprisals or discrimination against persons or organizations for their activities during the hostilities and also undertakes to guarantee their democratic freedoms.

CHAPTER IV. PRISONER OF WAR AND CIVILIAN INTERNEES

ARTICLE 16

The liberation and repatriation of all prisoners of war and civilian internees detained by each of the two parties at the coming into force of the present Agreement shall be carried out under the following conditions:

(a) All prisoners of war and civilian internees of Laotian and other nationalities captured since the beginning of hostilities in Laos, during military operations or in any other circumstances of war and in any part of the territory of Laos, shall be liberated within a period of thirty (30) days after the date when the cease-fire comes into effect.

(b) The term "civilian internees" is understood to mean all persons who, having in any way contributed to the political and armed strife between the two parties, have been arrested for that reason or kept in detention by either party during the period of hostilities.

(c) All foreign prisoners of war captured by either party shall be surrendered to the appropriate authorities of the other party, who shall give them all possible assistance in proceeding to the destination of their choice.

CHAPTER V. MISCELLANEOUS

ARTICLE 17

The Commanders of the forces of the two parties shall ensure that persons under their respective commands who violate any of the provisions of the present Agreement are suitably punished.

ARTICLE 18

In cases in which the place of burial is known and the existence of graves has been established, the Commander of the forces of each party shall, within a specified period after the entry into force of the present Agreement, permit the graves service of the other party to enter that part of Laotian territory under his military control for the purpose of finding and removing the bodies of deceased military personnel of that party, including the bodies of deceased prisoners of war.

The Joint Commission shall fix the procedures by which this task is carried out and the time limits within which it must be completed. The Commander of the forces of each party shall communicate to the other all information in his possession as to the place of burial of military personnel of the other party.

ARTICLE 19

The present Agreement shall apply to all the armed forces of either party. The armed forces of each party shall respect the territory under the military control of the other party, and engage in no hostile act against the other party.

For the purpose of the present article the word "territory" includes territorial waters and air space.

ARTICLE 20

The Commanders of the forces of the two parties shall afford full protection and all possible assistance and cooperation to the Joint Commission and its joint groups and to the International Commission and its inspection teams in the performance of the functions and tasks assigned to them by the present Agreement.

ARTICLE 21

The costs involved in the operation of the Joint Commission and its joint groups and of the International Commission and its inspection teams shall be shared equally between the two parties.

ARTICLE 22

The signatories of the present Agreement and their successors in their functions shall be responsible for the observance and enforcement of the terms and provisions thereof. The Commanders of the forces of the two parties shall, within their respective commands, take all steps and make all arrangements necessary to ensure full compliance with all the provisions of the present Agreement by all military personnel under their command.

ARTICLE 23

The procedures laid down in the present Agreement shall, whenever necessary, be examined by the Commanders of the two parties and, if necessary, defined more specifically by the Joint Commission.

CHAPTER VI. JOINT COMMISSION AND INTERNATIONAL COMMISSION FOR SUPERVISION AND CONTROL IN LAOS

ARTICLE 24

Responsibility for the execution of the Agreement on the cessation of hostilities shall rest with the parties.

ARTICLE 25

An International Commission shall be responsible for control and supervision of the application of the provisions of the Agreement on the cessation of hostilities in Laos. It shall be composed of representatives of the following States: Canada, India and Poland. It shall be presided over by the representative of India. Its headquarters shall be at Vientiane.

ARTICLE 26

The International Commission shall set up fixed and mobile inspection teams, composed of an equal number of officers appointed by each of the above-mentioned States.

The fixed teams shall be located at the following points: Pakse, Seno, Tchepone, Vientiane, Xieng-Khouang, Phongsaly, Sophao (province of Sam Neua). These points of location may, at a later date, be altered by agreement between the Government of Laos and the International Commission.

The zones of action of the mobile teams shall be the regions bordering the land frontiers of Laos. Within the limits of their zones of action, they shall have the right to move freely and shall receive from the local civil and military authorities all facilities they may require for the fulfillment of their tasks (provision of personnel, access to documents needed for supervision, summoning of witnesses needed for enquiries, security and freedom of movement of the inspection teams, etc. . . .). They shall have at their disposal such modern means of transport, observation and communication as they may require.

Outside the zones of action defined above, the mobile teams may, with the agreement of the Command of the party concerned, move about as required by the tasks assigned to them by the present Agreement.

ARTICLE 27

The International Commission shall be responsible for supervising the execution by the parties of the provisions of the present Agreement. For this purpose it shall fulfill the functions of control, observation, inspection and investigation connected with the implementation of the provisions of the Agreement on the cessation of hostilities, and shall in particular:

(a) Control the withdrawal of foreign forces in accordance with the provisions of the Agreement on the cessation of hostilities and see that frontiers are respected;

(b) Control the release of prisoners of war and civilian internees;
(c) Supervise, at ports and airfields and along all the frontiers of Laos, the implementation of the provisions regulating the introduction into Laos of military personnel and war materials; and
(d) Supervise the implementation of the clauses of the Agreement on the cessation of hostilities relating to rotation of personnel and to supplies for French Union security forces maintained in Laos.

ARTICLE 28

A Joint Commission shall be set up to facilitate the implementation of the clauses relating to the withdrawal of foreign forces.

The Joint Commission shall form joint groups, the number of which shall be decided by mutual agreement between the parties.

The Joint Commission shall facilitate the implementation of the clauses of the Agreement on the cessation of hostilities relating to the simultaneous and general cease-fire in Laos for all regular and irregular armed forces of the two parties.

It shall assist the parties in the implementation of the said clauses; it shall ensure liaison between them for the purpose of preparing and carrying out plans for the implementation of the said clauses; it shall endeavour to settle any disputes between the parties arising out of the implementation of these clauses. The joint groups shall follow the forces in their movements and shall be disbanded once the withdrawal plans have been carried out.

ARTICLE 29

The Joint Commission and the joint groups shall be composed of an equal number of representatives of the Commands of the parties concerned.

ARTICLE 30

The International Commission shall, through the medium of the inspection teams mentioned above, and as soon as possible, either on its own initiative, or at the request of the Joint Commission, or of one of the parties, undertake the necessary investigations both documentary and on the grounds.

ARTICLE 31

The inspection teams shall transmit to the International Commission the results of their supervision, investigations and observations; furthermore, they shall draw up such special reports as they may consider necessary or as may be requested from them by the Commission. In the case of a disagreement within the teams the findings of each member shall be transmitted to the Commission.

ARTICLE 32

If an inspection team is unable to settle an incident or considers that there is a violation or threat of a serious violation, the International Commission shall be informed; the latter shall examine the reports and findings of the inspection teams and shall inform the parties of the measures which should be taken for the settlement of the incident, ending of the violation or removal of the threat of violation.

ARTICLE 33

When the Joint Commission is unable to reach agreement on the interpretation of a provision or on the appraisal of a fact, the International Commission shall be informed of the disputed question. Its recommendations shall be sent directly to the parties and shall be notified to the Joint Commission.

ARTICLE 34

The recommendations of the International Commission shall be adopted by majority vote, subject to the provisions of Article 35. If the votes are equally divided, the chairman's vote shall be decisive.

The International Commission may make recommendations concerning amendments and additions which should be made to the provisions of the Agreement

on the cessation of hostilities in Laos, in order to ensure more effective execution of the said Agreement. These recommendations shall be adopted unanimously.

ARTICLE 35

On questions concerning violations, or threats of violations, which might lead to a resumption of hostilities and, in particular,

(a) Refusal by foreign armed forces to effect the movements provided for in the withdrawal plan.

(b) Violation or threat of violation of the country's integrity, by foreign armed forces,

the decisions of the International Commission must be unanimous.

ARTICLE 36

If one of the parties refuses to put a recommendation of the International Commission into effect, the parties concerned or the Commission itself shall inform the members of the Geneva Conference.

If the International Commission does not reach unanimity in the cases provided for in Article 35, it shall transmit a majority report and one or more minority reports to the members of the Conference.

The International Commission shall inform the members of the Conference of all cases in which its work is being hindered.

ARTICLE 37

The International Commission shall be set up at the time of the cessation of hostilities in Indo-China in order that it may be able to fulfill the tasks prescribed in Article 27.

ARTICLE 38

The International Commission for Supervision and Control in Laos shall act in close co-operation with the International Commissions in Viet Nam and Cambodia.

The Secretaries-General of these three Commissions shall be responsible for co-ordinating their work and for relations between them.

ARTICLE 39

The International Commission for Supervision and Control in Laos may, after consultation with the International Commissions in Cambodia and Viet Nam, and having regard to the development of the situation in Cambodia and Viet Nam, progressively reduce its activities. Such a decision must be adopted unanimously.

CHAPTER VII

ARTICLE 40

All the provisions of the present Agreement, save paragraph (a) of Article 2, shall enter into force at 24 hours (Geneva time) on July 22, 1954.

ARTICLE 41

Done at Geneva (Switzerland) on July 20, 1954, at 24 hours, in the French language:

For the Commander-in-Chief of the forces of the French Union in Indo-China:

DELTEIL,
General de Brigade.

For the Commander-in-Chief of the fighting units of "Pathet-Lao" and for the Commander-in-Chief of the People's Army of Viet Nam:

TA-QUANG-BUU,
Vice-Minister of National Defence
of the Democratic Republic of Viet Nam.

AGREEMENT ON THE CESSATION OF HOSTILITIES IN VIET NAM,¹ JULY 20, 1954

CHAPTER I. PROVISIONAL MILITARY DEMARCATION LINE AND DEMILITARISED ZONE

ARTICLE 1

A provisional military demarcation line shall be fixed, on either side of which the forces of the two parties shall be regrouped after their withdrawal, the forces of the People's Army of Viet Nam to the north of the line and the forces of the French Union to the south.

The provisional military demarcation line is fixed as shown on the map attached (2).

It is also agreed that a demilitarised zone shall be established on either side of the demarcation line, to a width of not more than 5 kms. from it, to act as a buffer zone and avoid any incidents which might result in the resumption of hostilities.

ARTICLE 2

The period within which the movement of all forces of either party into its regrouping zone on either side of the provisional military demarcation line shall be completed shall not exceed three hundred (300) days from the date of the present Agreement's entry into force.

ARTICLE 3

When the provisional military demarcation line coincides with a waterway, the waters of such waterway shall be open to civil navigation by both parties wherever one bank is controlled by one party and the other bank by the other party. The Joint Commission shall establish rules of navigation for the stretch of waterway in question. The merchant shipping and other civilian craft of each party shall have unrestricted access to the land under its military control.

ARTICLE 4

The provisional military demarcation line between the two final regrouping zones is extended into the territorial waters by a line perpendicular to the general line of the coast.

All coastal islands north of this boundary shall be evacuated by the armed forces of the French Union, and all islands south of it shall be evacuated by the forces of the People's Army of Viet Nam.

ARTICLE 5

To avoid any incidents which might result in the resumption of hostilities, all military forces, supplies and equipment shall be withdrawn from the demilitarised zone within twenty-five (25) days of the present Agreement's entry into force.

ARTICLE 6

No person, military or civilian, shall be permitted to cross the provisional military demarcation line unless specifically authorised to do so by the Joint Commission.

ARTICLE 7

No person, military or civilian, shall be permitted to enter the demilitarised zone except persons concerned with the conduct of civil administration and relief and persons specifically authorised to enter by the Joint Commission.

¹ Miscellaneous No. 20 (1954), Further Documents Relating to the Discussion of Indo-China at the Geneva Conference, June 16-July 21, 1954, Cmd. 9239 (London: HMSO, August 1954).

ARTICLE 8

Civil administration and relief in the demilitarized zone on either side of the provisional military demarcation line shall be the responsibility of the Commanders-in-Chief of the two parties in their respective zones. The number of persons, military or civilian, from each side who are permitted to enter the demilitarized zone for the conduct of civil administration and relief shall be determined by the respective Commanders, but in no case shall the total number authorized by either side exceed at any one time a figure to be determined by the Trung Gia Military Commission or by the Joint Commission. The number of civil police and the arms to be carried by them shall be determined by the Joint Commission. No one else shall carry arms unless specifically authorized to do so by the Joint Commission.

ARTICLE 9

Nothing contained in this chapter shall be construed as limiting the complete freedom of movement, into, out of or within the demilitarized zone, of the Joint Commission, its joint groups, the International Commission to be set up as indicated below, its inspection teams and any other persons, supplies or equipment specifically authorized to enter the demilitarized zone by the Joint Commission. Freedom of movement shall be permitted across the territory under the military control of either side over any road or waterway which has to be taken between points within the demilitarized zone when such points are not connected by roads or waterways lying completely within the demilitarized zone.

CHAPTER II. PRINCIPLES AND PROCEDURE GOVERNING IMPLEMENTATION OF THE PRESENT AGREEMENT

ARTICLE 10

The commanders of the Forces on each side, on the one side the Commander-in-Chief of the French Union forces in Indo-China and on the other side the Commander-in-Chief of the People's Army of Viet Nam, shall order and enforce the complete cessation of all hostilities in Viet Nam by all armed forces under their control, including all units and personnel of the ground, naval and air forces.

ARTICLE 11

In accordance with the principle of a simultaneous cease-fire throughout Indo-China, the cessation of hostilities shall be simultaneous throughout all parts of Viet Nam, in all areas of hostilities and for all the forces of the two parties.

Taking into account the time effectively required to transmit the cease-fire order down to the lowest echelons of the combatant forces on both sides, the two parties are agreed that the cease-fire shall take effect completely and simultaneously for the different sectors of the country as follows:

Northern Viet Nam at 8:00 a.m. (local time) on July 27, 1954.

Central Viet Nam at 8:00 a.m. (local time) on August 1, 1954.

Southern Viet Nam at 8:00 a.m. (local time) on August 11, 1954.

It is agreed that Peking mean time shall be taken as local time.

From such time as the cease-fire becomes effective in Northern Viet Nam, both parties undertake not to engage in any large-scale offensive action in any part of the Indo-Chinese theatre of operations and not to commit the air forces based on Northern Viet Nam outside that sector. The two parties also undertake to inform each other of their plans for movement from one regrouping zone to another within twenty-five (25) days of the present Agreement's entry into force.

ARTICLE 12

All the operations and movements entailed in the cessation of hostilities and regrouping must proceed in a safe and orderly fashion:

(a) Within a certain number of days after the cease-fire Agreement shall have become effective, the number to be determined on the spot by the Trung Gia Military Commission, each party shall be responsible for removing and neutralizing mines (including river- and sea-mines), booby traps, explosives and any other dangerous substances placed by it. In the event of its being impossible to complete the work of removal and neutralization in time, the party concerned shall mark the spot by placing visible signs there. All demolitions, mine fields,

wire entanglements and other hazards to the free movement of the personnel of the Joint Commission and its joint groups, known to be present after the withdrawal of the military forces, shall be reported to the Joint Commission by the Commanders of the opposing forces;

(b) From the time of the cease-fire until regrouping is completed on either side of the demarcation line:

(1) The forces of either party shall be provisionally withdrawn from the provisional assembly areas assigned to the other party.

(2) When one party's forces withdraw by a route (road, rail, waterway, sea route) which passes through the territory of the other party (see Article 24), the latter party's forces must provisionally withdraw three kilometres on each side of such route, but in such a manner as to avoid interfering with the movements of the civil population.

ARTICLE 13

From the time of the cease-fire until the completion of the movements from one regrouping zone into the other, civil and military transport aircraft shall follow air-corridors between the provisional assembly areas assigned to the French Union forces north of the demarcation line on the one hand and the Laotian frontier and the regrouping zone assigned to the French Union forces on the other hand.

The position of the air-corridors, their width, the safety route for single-engined military aircraft transferred to the South and the search and rescue procedure for aircraft in distress shall be determined on the spot by the Trung Gia Military Commission.

ARTICLE 14

Political and administrative measures in the two regrouping zones, on either side of the provisional military demarcation line:

(a) Pending the general elections which will bring about the unification of Viet Nam, the conduct of civil administration in each regrouping zone shall be in the hands of the party whose forces are to be regrouped there in virtue of the present Agreement.

(b) Any territory controlled by one party which is transferred to the other party by the regrouping plan shall continue to be administered by the former party until such date as all the troops who are to be transferred have completely left that territory so as to free the zone assigned to the party in question. From then on, such territory shall be regarded as transferred to the other party, who shall assume responsibility for it.

Steps shall be taken to ensure that there is no break in the transfer of responsibilities. For this purpose, adequate notice shall be given by the withdrawing party to the other party, which shall make the necessary arrangements, in particular by sending administrative and police detachments to prepare for the assumption of administrative responsibility. The length of such notice shall be determined by the Trung Gia Military Commission. The transfer shall be effected in successive stages for the various territorial sectors.

The transfer of the civil administration of Hanoi and Haiphong to the authorities of the Democratic Republic of Viet Nam shall be completed within the respective time-limits laid down in Article 15 for military movements.

(c) Each party undertakes to refrain from any reprisals or discrimination against persons or organizations on account of their activities during the hostilities and to guarantee their democratic liberties.

(d) From the date of entry into force of the present Agreement until the movement of troops is completed, any civilians residing in a district controlled by one party who wish to go and live in the zone assigned to the other party shall be permitted and helped to do so by the authorities in that district.

ARTICLE 15

The disengagement of the combatants, and the withdrawals and transfers of military forces, equipment and supplies shall take place in accordance with the following principles:

(a) The withdrawals and transfers of the military forces, equipment and supplies of the two parties shall be completed within three hundred (300) days, as laid down in Article 2 of the present Agreement;

(b) Within either territory successive withdrawals shall be made by sectors, portions of sectors or provinces. Transfers from one regrouping zone to another

shall be made in successive monthly instalments proportionate to the number of troops to be transferred;

(c) The two parties shall undertake to carry out all troop withdrawals and transfers in accordance with the aims of the present Agreement, shall permit no hostile act and shall take no step whatsoever which might hamper such withdrawals and transfers. They shall assist one another as far as this is possible;

(d) The two parties shall permit no destruction or sabotage of any public property and no injury to the life and property of the civil population. They shall permit no interference in local civil administration;

(e) The Joint Commission and the International Commission shall ensure that steps are taken to safeguard the forces in the course of withdrawal and transfer; and

(f) The Trung Gia Military Commission, and later the Joint Commission, shall determine by common agreement the exact procedure for the disengagement of the combatants and for troop withdrawals and transfers, on the basis of the principles mentioned above and within the framework laid down below.

(1) The disengagement of the combatants, including the concentration of the armed forces of all kinds and also each party's movements into the provisional assembly areas assigned to it and the other party's provisional withdrawal from it, shall be completed within a period not exceeding fifteen (15) days after the date when the ceasefire becomes effective.

The general delineation of the provisional assembly areas is set out in the maps (3) annexed to the present Agreement.

In order to avoid any incidents, no troops shall be stationed less than 1,500 metres from the lines delimiting the provisional assembly areas.

During the period until the transfers are concluded, all the coastal islands west of the following lines shall be included in the Haiphong perimeter:

Meridian of the southern point of Kebao Island,
Northern coast of Ile Rousse (excluding the island), extended as far as the meridian of Campha-Mines, and
Meridian of Campha-Mines.

(2) The withdrawals and transfers shall be effected in the following order and within the following periods (from the date of the entry into force of the present Agreement):

<i>Forces of the French Union</i>		<i>Days</i>
Hanoi perimeter.....		80
Haiphong perimeter.....		100
Haiphong perimeter.....		300

<i>Forces of the People's Army of Viet Nam</i>		<i>Days</i>
Ham Tan and Xuyenmoc provisional assembly area.....		80
Central Viet Nam provisional assembly area—first installment.....		80
Plaine des Jones provisional assembly area.....		100
Central Viet Nam provisional assembly area—first installment.....		80
Pointe Camau provisional assembly area.....		200
Central Viet Nam provisional assembly area—last installment.....		300

(3) Maps not printed.

CHAPTER III. BAN ON THE INTRODUCTION OF FRESH TROOPS, MILITARY PERSONNEL, ARMS AND MUNITIONS, MILITARY BASES

ARTICLE 16

With effect from the date of entry into force of the present Agreement, the introduction into Viet Nam of any troop reinforcements and additional military personnel is prohibited.

It is understood, however, that the rotation of units and groups of personnel, the arrival in Viet Nam of individual personnel on a temporary duty basis and the return to Viet Nam of the individual personnel after short periods of leave or temporary duty outside Viet Nam shall be permitted under the conditions laid down below:

(a) Rotation of units (defined in paragraph (c) of this Article) and groups of personnel shall not be permitted for French Union troops stationed north of the

provisional military demarcation line laid down in Article 1 of the present Agreement during the withdrawal period provided for in Article 2.

However, under the heading of individual personnel not more than fifty (50) men, including officers, shall during any one month be permitted to enter that part of the country north of the provisional military demarcation line on a temporary duty basis or to return there after short periods of leave or temporary duty outside Viet Nam.

(b) "Rotation" is defined as the replacement of units or groups of personnel by other units of the same echelon or by personnel who are arriving in Viet Nam territory to do their overseas service there;

(c) The units rotated shall never be larger than a battalion—or the corresponding echelon for air and naval forces.

(d) Rotation shall be conducted on a man-for-man basis, provided, however, that in any one quarter neither party shall introduce more than fifteen thousand five hundred (15,500) members of its armed forces into Viet Nam under the rotation policy.

(e) Rotation units (defined in paragraph (c) of this Article) and groups of personnel, and the individual personnel mentioned in this Article, shall enter and leave Viet Nam only through the entry points enumerated in Article 20 below.

(f) Each party shall notify the Joint Commission and the International Commission at least two days in advance of any arrivals or departures of units, groups of personnel and individual personnel in or from Viet Nam. Reports on the arrivals or departures of units, groups of personnel and individual personnel in or from Viet Nam shall be submitted daily to the Joint Commission and the International Commission.

All the above-mentioned notifications and reports shall indicate the places and dates of arrival or departure and the number of persons arriving or departing;

(g) The International Commission, through its Inspection Teams, shall supervise and inspect the rotation of units and groups of personnel and the arrival and departure of individual personnel as authorised above, at the points of entry enumerated in Article 20 below.

ARTICLE 17

(a) With effect from the date of entry into force of the present Agreement, the introduction into Viet Nam of any reinforcements, in the form of all types of arms, munitions and other war material, such as combat aircraft, naval craft, pieces of ordnance, jet engines and jet weapons and armoured vehicles, is prohibited.

(b) It is understood, however, that war material, arms and munitions which have been destroyed, damaged, worn out or used up after the cessation of hostilities may be replaced on the basis of piece-for-piece of the same type and with similar characteristics. Such replacements of war material, arms and munitions shall not be permitted for French Union troops stationed north of the provisional military demarcation line laid down in Article 1 of the present Agreement, during the withdrawal period provided for in Article 2.

Naval craft may perform transport operations between the regrouping zones.

(c) The war material, arms and munitions for replacement purposes provided for a paragraph (b) of this Article, shall be introduced into Viet Nam only through the points of entry enumerated in Article 20 below. War material, arms and munitions to be replaced shall be shipped from Viet Nam only through the points of entry enumerated in Article 20 below.

(d) Apart from the replacements permitted within the limits laid down in paragraph (b) of this Article, the introduction of war material, arms and munitions of all types in the form of unassembled parts for subsequent assembly is prohibited.

(e) Each party shall notify the Joint Commission and the International Commission at least two days in advance of any arrivals or departures which may take place of war material, arms and munitions of all types.

In order to justify the requests for the introduction into Viet Nam of arms, munitions and other war material (as defined in paragraph (a) of this Article) for replacement purposes, a report concerning each incoming shipment shall be submitted to the Joint Commission and the International Commission. Such reports shall indicate the use made of the items so replaced.

(f) The International Commission, through its Inspection Teams, shall supervise and inspect the replacements permitted in the circumstances laid down in this Article, at the points of entry enumerated in Article 20 below.

ARTICLE 18

With effect from the date of entry into force of the present Agreement, the establishment of new military bases is prohibited throughout Viet Nam territory.

ARTICLE 19

With effect from the date of entry into force of the present Agreement, no military base under the control of a foreign State may be established in the regrouping zone of either party; the two parties shall ensure that the zones assigned to them do not adhere to any military alliance and are not used for the resumption of hostilities or to further an aggressive policy.

ARTICLE 20

The points of entry into Viet Nam for rotation personnel and replacements of material are fixed as follows:

Zones to the north of the provisional military demarcation line: Laokay, Langson, Tien-Yen, Haiphong, Vinh, Dong-Hoi, Muong-Sen;
Zones to the south of the provisional military demarcation line: Tourane, Quinhon, Nhatrang, Bangoi, Saigon, Cap St. Jacques, Tanchau.

CHAPTER IV. PRISONERS OF WAR AND CIVILIAN INTERNEES

ARTICLE 21

The liberation and repatriation of all prisoners of war and civilian internees detained by each of the two parties at the coming into force of the present Agreement shall be carried out under the following conditions:

(a) All prisoners of war and civilian internees of Viet Nam, French and other nationalities captured since the beginning of hostilities in Viet Nam during military operations or in any other circumstances of war and in any part of the territory of Viet Nam shall be liberated within a period of thirty (30) days after the date when the cease-fire becomes effective in each theatre.

(b) The term "civilian internees" is understood to mean all persons who, having in any way contributed to the political and armed struggle between the two parties, have been arrested for that reason and have been kept in detention by either party during the period of hostilities.

(c) All prisoners of war and civilian internees held by either party shall be surrendered to the appropriate authorities of the other party, who shall give them all possible assistance in proceeding to their country of origin, place of habitual residence or the zone of their choice.

CHAPTER V. MISCELLANEOUS

ARTICLE 22

The Commanders of the Forces of the two parties shall ensure that persons under their respective commands who violate any of the provisions of the present Agreement are suitably punished.

ARTICLE 23

In cases in which the place of burial is known and the existence of graves has been established, the Commander of the Forces of either party shall, within a specific period after the entry into force of the Armistice Agreement, permit the graves service personnel of the other party to enter the part of Viet Nam territory under their military control for the purpose of finding and removing the bodies of deceased military personnel of that party, including the bodies of deceased prisoners of war. The Joint Commission shall determine the procedures and the time limit for the performance of this task. The Commanders of the Forces of the two parties shall communicate to each other all information

in their possession as to the place of burial of military personnel of the other party.

ARTICLE 24

The present Agreement shall apply to all the armed forces of either party. The armed forces of each party shall respect the demilitarized zone and the territory under the military control of the other party, and shall commit no act and undertake no operation against the other party and shall not engage in blockade of any kind in Viet Nam.

For the purposes of the present Article, the word "territory" includes territorial waters and air space.

ARTICLE 25

The Commanders of the Forces of the two parties shall afford full protection and all possible assistance and cooperation to the Joint Commission and its joint groups and to the International Commission and its inspection teams in the performance of the functions and tasks assigned to them by the present Agreement.

ARTICLE 26

The costs involved in the operations of the Joint Commission and joint groups and of the International Commission and its Inspection Teams shall be shared equally between the two parties.

ARTICLE 27

The signatories of the present Agreement and their successors in their functions shall be responsible for ensuring the observance and enforcement of the terms and provisions thereof. The Commanders of the Forces of the two parties shall, within their respective commands, take all steps and make all arrangements necessary to ensure full compliance with all the provisions of the present Agreement by all elements and military personnel under their command.

The procedures laid down in the present Agreement shall, whenever necessary, be studied by the Commanders of the two parties and, if necessary, defined more specifically by the Joint Commission.

CHAPTER VI. JOINT COMMISSION AND INTERNATIONAL COMMISSION FOR SUPERVISION AND CONTROL IN VIET NAM

ARTICLE 28

Responsibility for the execution of the agreement on the cessation of hostilities shall rest with the parties.

ARTICLE 29

An International Commission shall ensure the control and supervision of this execution.

ARTICLE 30

In order to facilitate, under the conditions shown below, the execution of provisions concerning joint actions by the two parties, a Joint Commission shall be set up in Viet Nam.

ARTICLE 31

The Joint Commission shall be composed of an equal number of representatives of the Commanders of the two parties.

ARTICLE 32

The Presidents of the delegations to the Joint Commission shall hold the rank of General.

The Joint Commission shall set up joint groups, the number of which shall be determined by mutual agreement between the parties. The joint groups shall be composed of an equal number of officers from both parties. Their location on the demarcation line between the regrouping zones shall be determined by the parties whilst taking into account the powers of the Joint Commission.

ARTICLE 33

The Joint Commission shall ensure the execution of the following provisions of the Agreement on the cessation of hostilities:

(a) A simultaneous and general cease-fire in Viet Nam for all regular and irregular armed forces of the two parties.

(b) A re-groupment of the armed forces of the two parties.

(c) Observance of the demarcation lines between the regrouping zones and of the demilitarised sectors.

Within the limits of its competence it shall help the parties to execute the said provisions, shall ensure liaison between them for the purpose of preparing and carrying out plans for the application of these provisions, and shall endeavour to solve such disputed questions as may arise between the parties in the course of executing these provisions.

ARTICLE 34

An International Commission shall be set up for the control and supervision over the application of the provisions of the agreement on the cessation of hostilities in Viet Nam. It shall be composed of representatives of the following States: Canada, India and Poland.

It shall be presided over by the Representative of India.

ARTICLE 35

The International Commission shall set up fixed and mobile inspection teams, composed of an equal number of officers appointed by each of the above-mentioned States. The mixed teams shall be located at the following points: Laokay, Langson, Tien-Yen, Haiphong, Vinh, Dong-Hoi, Muong-Sen, Tourane, Quinhon, Nhatrang, Bangoi, Saigon, Cap St. Jacques, Tranchau. These points of location may, at a later date, be altered at the request of the Joint Commission, or of one of the parties, or of the International Commission itself, by agreement between the International Commission and the command of the party concerned. The zones of action of the mobile teams shall be the regions bordering the land and sea frontiers of Viet Nam, the demarcation lines between the regrouping zones and the demilitarised zones. Within the limits of these zones they shall have the right to move freely and shall receive from the local civil and military authorities all facilities they may require for the fulfilment of their tasks (provision of personnel, placing at their disposal documents needed for supervision, summoning witnesses necessary for holding enquiries, ensuring the security and freedom of movement of the inspection teams, etc. . . .). They shall have at their disposal such modern means of transport, observation and communication as they may require. Beyond the zones of action as defined above, the mobile teams may, by agreement with the command of the party concerned, carry out other movements within the limits of the tasks given them by the present agreement.

ARTICLE 36

The International Commission shall be responsible for supervising the proper execution by the parties of the provisions of the agreement. For this purpose it shall fulfil the tasks of control, observation, inspection and investigation connected with the application of the provisions of the agreement on the cessation of hostilities, and it shall in particular:

(a) Control the movement of the armed forces of the two parties, effected within the framework of the regroupment plan.

(b) Supervise the demarcation lines between the regrouping areas, and also the demilitarised zones.

(c) Control the operations of releasing prisoners of war and civilian internees.

(d) Supervise at ports and airfields as well as along all frontiers of Viet Nam the execution of the provisions of the agreement on the cessation of hostilities, regulating the introduction into the country of armed forces, military personnel and of all kinds of arms, munitions and war material.

ARTICLE 37

The International Commission shall, through the medium of the inspection teams mentioned above, and as soon as possible either on its own initiative, or

at the request of the Joint Commission, or of one of the parties, undertake the necessary investigations both documentary and on the ground.

ARTICLE 38

The inspection teams shall submit to the International Commission the results of their supervision, their investigation and their observations, furthermore they shall draw up such special reports as they may consider necessary or as may be requested from them by the Commission. In the case of a disagreement within the teams, the conclusions of each member shall be submitted to the Commission.

ARTICLE 39

If any one inspection team is unable to settle an incident or considers that there is a violation or a threat of a serious violation, the International Commission shall be informed; the latter shall study the reports and the conclusions of the inspection teams and shall inform the parties of the measures which should be taken for the settlement of the incident, ending of the violation or removal of the threat of violation.

ARTICLE 40

When the Joint Commission is unable to reach an agreement on the interpretation to be given to some provision or on the appraisal of a fact, the International Commission shall be informed of the disputed question. Its recommendations shall be sent directly to the parties and shall be notified to the Joint Commission.

ARTICLE 41

The recommendations of the International Commission shall be adopted by majority vote, subject to the provisions contained in Article 42. If the votes are divided, the chairman's vote shall be decisive.

The International Commission may formulate recommendations concerning amendments and additions which should be made to the provisions of the agreement on the cessation of hostilities in Viet Nam, in order to ensure a more effective execution of that agreement. These recommendations shall be adopted unanimously.

ARTICLE 42

When dealing with questions concerning violations, or threats of violations, which might lead to a resumption of hostilities, namely:

(a) Refusal by the armed forces of one party to effect the movements provided for in the regroupment plan; and

(b) Violation by the armed forces of one of the parties of the regrouping zones, territorial waters, or air space of the other party;

the decisions of the International Commission to be unanimous.

ARTICLE 43

If one of the parties refuses to put into effect a recommendation of the International Commission, the parties concerned or the Commission itself shall inform the members of the Geneva Conference.

If the International Commission does not reach unanimity in the cases provided for in Article 42, it shall submit a majority report and one or more minority reports to the members of the Conference.

The International Commission shall inform the members of the Conference in all cases where its activity is being hindered.

ARTICLE 44

The International Commission shall be set up at the time of the cessation of hostilities in Indo-China in order that it should be able to fulfil the tasks provided for in Article 36.

ARTICLE 45

The International Commission for Supervision and Control in Viet Nam shall act in close co-operation with the International Commissions for Supervision and Control in Cambodia and Laos.

The Secretaries-General of these three Commissions shall be responsible for coordinating their work and for relations between them.

ARTICLE 46

The International Commission for Supervision and Control in Viet Nam may, after consultation with the International Commissions for Supervision and Control in Cambodia and Laos, and having regard to the development of the situation in Cambodia and Laos, progressively reduce its activities. Such a decision must be adopted unanimously.

ARTICLE 47

All the provisions of the present Agreement, save the second sub-paragraph of Article 11, shall enter into force at 2400 hours (Geneva time) on July 22, 1954. Done in Geneva at 2400 hours on July 22, 1954, in French and in Vietnamese, both texts being equally authentic.

For the Commander-in-Chief of the French Union Forces in Indo-China:

DELTIEL,
Brigadier-General.

For the Commander-in-Chief of the People's Army of Viet Nam:

TA-QUANG-BUU,
Vice-Minister of National Defense
of the Democratic Republic of Viet Nam.

UNILATERAL DECLARATIONS OF CAMBODIA, LAOS, FRANCE AT THE GENEVA CONFERENCE (1954)¹

DOCUMENT No. 6—DECLARATION BY THE ROYAL GOVERNMENT OF CAMBODIA JULY 21, 1954

(Reference: Article 3 of the Final Declaration)

The Royal Government of Cambodia.
In the desire to ensure harmony and agreement among the peoples of the Kingdom.

Declares itself resolved to take the necessary measure to integrate all citizens, without discrimination into the national community and to guarantee them the enjoyment of the rights and freedoms for which the Constitution of the Kingdom provides;

Affirms that all Cambodian citizens may freely participate as electors or candidates in general elections by secret ballot.

DOCUMENT No. 7—DECLARATION BY THE ROYAL GOVERNMENT OF LAOS JULY 21, 1954

(Reference: Article 3 of the Final Declaration)

The Royal Government of Laos.
In the desire to ensure harmony and agreement among the peoples of the Kingdom.

Declares itself resolved to take the necessary measures to integrate all citizens, without discrimination into the national community and to guarantee them the enjoyment of the rights and freedoms for which the Constitution of the Kingdom provides;

Affirms that all Laotian citizens may freely participate as electors or candidates in general elections by secret ballot; and

Announces, furthermore, that it will promulgate measures to provide for special representation in the Royal Administration of the provinces of Phong Saly and Sam Neua during the interval between the cessation of hostilities and the general elections of the interests of Laotian nations who did not support the Royal forces during hostilities.

DOCUMENT No. 8—DECLARATION BY THE ROYAL GOVERNMENT OF CAMBODIA JULY 21, 1954

(Reference: Articles 3 and 5 of the Final Declaration)

The Royal Government of Cambodia is resolved never to take part in an aggressive policy and never to permit the territory of Cambodia to be utilised in the service of such a policy.

The Royal Government of Cambodia will not join in any agreement with other States, if this agreement carries for Cambodia the obligation to enter into a military alliance not in conformity with the principles of the Charter of the United Nations, or, as long as its security is not threatened, the obligation to establish bases on Cambodian territory for the military forces of foreign Powers.

The Royal Government of Cambodia is resolved to settle its international disputes by peaceful means in such a manner as not to endanger peace, international security and justice.

During the period which will elapse between the date of the cessation of hostilities in Vietnam and that of the final settlement of political problems in this country, the Royal Government of Cambodia will not solicit foreign aid in war material, personnel or instructors except for the purpose of the effective defense of the territory.

DOCUMENT No. 9—DECLARATION BY THE ROYAL GOVERNMENT OF LAOS JULY 21, 1954

(Reference: Articles 4 and 5 of the Final Declaration)

The Royal Government of Laos is resolved never to pursue a policy of aggression and will never permit the territory of Laos to be used in furtherance of such a policy.

The Royal Government of Laos will never join in any agreement with other States if this agreement includes the obligation for the Royal Government of Laos to participate in a military alliance not in conformity with the principles of the Charter of the United Nations or with the principles of the agreement on the cessation of hostilities or, unless its security is threatened, the obligation to establish bases on Laotian territory for military forces of foreign Powers.

The Royal Government of Laos is resolved to settle its international disputes by peaceful means so that international peace and security and justice are not endangered.

During the period between the cessation of hostilities in Viet Nam and the final settlement of that country's political problems, the Royal Government of Laos will not request foreign aid, whether in war material, in personnel or in instructors, except for the purpose of its effective territorial defense and to the extent defined by the agreement on the cessation of hostilities.

DOCUMENT No. 10—DECLARATION BY THE GOVERNMENT OF THE FRENCH REPUBLIC JULY 21, 1954

(Reference: Article 10 of the Final Declaration)

The Government of the French Republic declares that it is ready to withdraw its troops from the territory of Cambodia, Laos and Vietnam, at the request of the Governments concerned and within a period which shall be fixed by agreement between the parties, except in the cases where, by agreement between the two parties, a certain number of French troops shall remain at specified points and for a specified time.

DOCUMENT No. 11—DECLARATION BY THE GOVERNMENT OF THE FRENCH REPUBLIC JULY 21, 1954

(Reference: Article 11 of the Final Declaration)

For the settlement of all the problems connected with the reestablishment and consolidation of peace in Cambodia, Laos and Viet Nam, the French Government will proceed from the principle of respect for the independence and sovereignty, the unity and territorial integrity of Cambodia, Laos and Viet Nam.

FINAL DECLARATION

Final Declaration of the Geneva Conference on the problem of restoring peace in Indo-China, in which the representatives of Cambodia, the Democratic Republic of Viet Nam, France, Laos, the People's Republic of China, the State of Viet Nam, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America took part.¹

July 21, 1954.

(1) The Conference takes note of the agreements ending hostilities in Cambodia, Laos and Viet Nam and organising international control and the supervision of the execution of the provisions of these agreements.

(2) The Conference expresses satisfaction at the ending of hostilities in Cambodia, Laos and Viet Nam; the Conference expresses its conviction that the execution of the provisions set out in the present declaration and in the agreements on the cessation of hostilities will permit Cambodia, Laos and Viet Nam henceforth to play their part, in full independence and sovereignty, in the peaceful community of nations.

(3) The Conference takes note of the declarations made by the Governments of Cambodia and of Laos of their intention to adopt measures permitting all citizens to take their place in the national community, in particular by participating in the next general elections, which, in conformity with the constitution of each of these countries, shall take place in the course of the year 1955, by secret ballot and in conditions of respect for fundamental freedoms.

(4) The Conference takes note of the clauses in the agreement on the cessation of hostilities in Viet Nam prohibiting the introduction into Viet Nam of foreign troops and military personnel as well as of all kinds of arms and munitions. The conference also takes note of the declarations made by the Governments of Cambodia and Laos of their resolution not to request foreign aid, whether in war material, in personnel or in instructors except for the purpose of the effective defence of their territory and, in the case of Laos, to the extent defined by the agreements on the cessation of hostilities in Laos.

(5) The Conference takes note of the clauses in the agreement on the cessation of hostilities in Viet Nam to the effect that no military base under the control of a foreign State may be established in the regrouping zones of the two parties, the latter having the obligation to see that the zones allotted to them shall not constitute part of any military alliance and shall not be utilised for the resumption of hostilities or in the service of an aggressive policy. The Conference also takes note of the declarations of the Governments of Cambodia and Laos to the effect that they will not join in any agreement with other States if this agreement includes the obligation to participate in a military alliance not in conformity with the principles of the Charter of the United Nations or, in the case of Laos, with the principles of the agreement on the cessation of hostilities in Laos or, so long as their security is not threatened, the obligation to establish bases on Cambodian or Laotian territory for the military forces of foreign Powers.

(6) The Conference recognises that the essential purpose of the agreement relating to Viet Nam is to settle military questions with a view to ending hostilities and that the military demarcation line is provisional and should not in any way be interpreted as constituting a political or territorial boundary. The Conference expresses its conviction that the execution of the provisions set out in the present declaration and in the agreement on the cessation of hostilities creates the necessary basis for the achievement in the near future of a political settlement in Viet Nam.

(7) The Conference declares that, so far as Viet Nam is concerned, the settlement of political problems, effected on the basis of respect for the principles of independence, unity and territorial integrity, shall permit the Vietnamese people to enjoy the fundamental freedoms, guaranteed by democratic institutions established as a result of free general elections by secret ballot. In order to ensure that sufficient progress in the restoration of peace has been made, and that all the necessary conditions obtain for free expression of the national will, general elections shall be held in July 1956, under the supervision of an international commission composed of representatives of the Member States of the International Supervisory Commission, referred to in the agreement on the cessation

of hostilities. Consultations will be held on this subject between the competent representative authorities of the two zones from July 20, 1955, onwards.

(8) The provisions of the agreements on the cessation of hostilities intended to ensure the protection of individuals and of property must be most strictly applied and must, in particular, allow everyone in Viet Nam to decide freely in which zone he wishes to live.

(9) The competent representative authorities of the Northern and Southern zones of Viet Nam, as well as the authorities of Laos and Cambodia, must not permit any individual or collective reprisals against persons who have collaborated in any way with one of the parties during the war, or against members of such persons' families.

(10) The Conference takes note of the declaration of the Government of the French Republic to the effect that it is ready to withdraw its troops from the territory of Cambodia, Laos and Viet Nam, at the request of the Governments concerned and within periods which shall be fixed by agreement between the parties except in the cases where, by agreement between the two parties, a certain number of French troops shall remain at specified points and for a specified time.

(11) The Conference takes note of the declaration of the French Government to the effect that for the settlement of all the problems connected with the re-establishment and consolidation of peace in Cambodia, Laos and Viet Nam, the French Government will proceed from the principle of respect for the independence and sovereignty, unity and territorial integrity of Cambodia, Laos and Viet Nam.

(12) In their relations with Cambodia, Laos and Viet Nam, each member of the Geneva Conference undertakes to respect the sovereignty, the independence, the unity and the territorial integrity of the above-mentioned States, and to refrain from any interference in their internal affairs.

(13) The members of the Conference agree to consult one another on any question which may be referred to them by the International Supervisory Commission, in order to study such measures as may prove necessary to ensure that the agreements on the cessation of hostilities in Cambodia, Laos and Viet Nam are respected.

[Geneva Conference, Final Text, Original in French]

STATEMENT OF THE GOVERNMENT OF THE STATE OF VIETNAM ON THE CONCLUSION AND CONDITIONS OF THE ARMISTICE¹

The Delegation of the State of Vietnam has presented a proposal designed to obtain an armistice, without even the temporary partitioning of Vietnam, through the disarming of all belligerent forces after their withdrawal into the smallest possible regroupment areas, and the establishment of provisional control by the United Nations over the entire territory pending reestablishment of stability and peace that will permit the Vietnamese people to decide their destiny through free elections.

It protests the rejection, without prior examination, of this proposal that alone respects the aspirations of the Vietnamese people.

It appeals to the Conference to at least agree to the demilitarization and neutralization of the bishoprics of the North Vietnam Delta.

It solemnly protests:

(a) The hasty conclusion of the armistice agreement by the French and Vietminh High Commands acting alone, notwithstanding the fact that the French High Command commands the Vietnamese troops only through a delegation of authority by the Chief of State of Vietnam, and despite the fact that several clauses of this agreement are of a nature to compromise seriously the political future of the Vietnamese people;

(b) The fact that this armistice agreement abandons to the Vietminh territories some of which are still occupied by Vietnamese troops and are essential to the defense of Vietnam against a greater Communist expansion, and actually results in taking from the State of Vietnam its indefeasible right to organize its defense other than by maintaining a foreign army on its territory; and

¹ Miscellaneous No. 20 (1954). Further documents relating to the discussion of Indo-China at the Geneva Conference, June 16-July 21, 1953, Cmd. 9239 (London: HMSO,

¹ Unofficial translation from a mimeographed copy circulated at the Geneva Conference. See also *Documents on American Foreign Relations*, Harper, New York, 1955, p. 315.

(c) The fact that the French High Command, without prior agreement of the delegation of the State of Vietnam, arrogated the right to set the date for future elections, notwithstanding the fact that this is clearly a political matter.

Consequently, the Government of the State of Vietnam asks that the Conference officially take note that it solemnly protests the manner in which the armistice was concluded, and the conditions of this armistice that take no account of the deep aspirations of the Vietnamese people, and that the fact that it retains complete freedom of action to safeguard the sacred right of the Vietnamese people to territorial unity, national independence, and freedom.

Geneva, July 21, 1954.

DECLARATION BY THE GOVERNMENT OF VIETNAM DURING THE CLOSING SESSION OF THE GENEVA CONFERENCE ON INDOCHINA, JULY 21, 1954.¹

"Mr. Chairman, as regards the final Declaration of the Conference, the Vietnamese Delegation requests the Conference to incorporate in this Declaration after Article 10, the following text:

"The Conference takes note of the Declaration of the Government of the State of Vietnam undertaking:

"To make and support every effort to re-establish a real and lasting peace in Viet Nam;

"Not to use force to resist the procedures for carrying the cease-fire into effect, in spite of the objections and reservations that the State of Vietnam has expressed, especially in its final statement."

UNILATERAL DECLARATION BY THE UNITED STATES AT THE CLOSING SESSION OF THE GENEVA CONFERENCE, JULY 21, 1954²

The Government of the United States, being resolved to devote its efforts to the strengthening of peace in accordance with the principles and purposes of the United Nations, takes note of the agreements concluded at Geneva on July 20 and 21, 1954 between (a) the Franco-Laotian Command and the Command of the Peoples Army of Viet-Nam, (b) the Royal Khmer Army Command, the Command of the Peoples Army of Viet-Nam and of paragraphs 1 to 12 inclusive of the declaration presented to the Geneva Conference on July 21, 1954, declares with regard to the aforesaid agreements and paragraphs that (i) it will refrain from the threat or the use of force to disturb them, in accordance with Article 2(4) of the Charter of the United Nations dealing with the obligation of members to refrain in their international relations from the threat or use of force; and (ii) it would view any renewal of the aggression in violation of the aforesaid agreements with grave concern and as seriously threatening international peace and security.

In connection with the statement in the declaration concerning free elections in Viet-Nam my Government wishes to make clear its position which it has expressed in a declaration made in Washington on June 20, 1954, as follows:

In the case of nations now divided against their will, we shall continue to seek to achieve unity through free elections supervised by the United Nations to insure that they are conducted fairly.

With respect to the statement made by the representative of the State of Viet-Nam, the United States reiterates its traditional position that peoples are entitled to determine their own future and that it will not join in an arrangement which would hinder this. Nothing in its declaration just made is intended to or does indicate any departure from this traditional position.

We share the hope that the agreements will permit Cambodia, Laos and Viet-Nam to play their part, in full independence and sovereignty, in the peaceful community of nations, and will enable the peoples of that area to determine their own future.

¹ Miscellaneous No. 20 (1954), Further documents relating to the discussion of Indo-China at the Geneva Conference, June 16-July 21, 1954, Cmd. 9239 (London: HMSO, August 1954), p. 7.

² Department of State Press Release No. 394, July 21, 1954.

EXCERPTS FROM THE ANNUAL REPORT OF UN SECRETARY-GENERAL DAG HAMMARSKJOLD PRESENTED ON JULY 21, 1954 FOR THE PERIOD JULY 1, 1953-JUNE 30, 1954¹

"The fighting in Indo-China was made a subject of international negotiation for the first time at Geneva early in the present year. Following an initiative by the Government of Thailand, the United Nations also has been seized of one aspect of the problem. To undertake and persist in all reasonable attempts to bring the hostilities to an end by negotiation and to prevent them from recurring or spreading was fully consistent with the most basic purposes of Members, as expressed in the Charter of the United Nations. To bring around the conference table, for the first time, Government leaders of all those nations with the greatest power over the issues of war and peace was a true expression of United Nations principles.

... It is also clear that every serious effort made to further the purposes of the United Nations, whether inside or outside its organizational framework, is to be welcomed by the United Nations, and it is equally clear that the Organization should give such efforts all possible support and assistance.

However, developments outside the organizational framework of the United Nations, but inside its sphere of interest, do give rise to certain problems which require serious consideration. In the short view, other approaches than those provided by the United Nations machinery may seem more expedient and convenient, but in the long view they may yet be inadvisable. To fail to use the United Nations machinery on those matters for which Governments have given to the Organization a special or primary responsibility under the Charter, or to improvise other arrangements without overriding practical and political reasons—to act thus may tend to weaken the position of the Organization and to reduce its influence and effectiveness, even when the ultimate purpose which it is intended to serve is a United Nations purpose.

The balance to be struck here must be struck with care.

... In those cases where the normal processes of diplomacy remain adequate and preferable, or where special conferences, such as those at Berlin and Geneva seem best to serve the cause of peace, the special interest in preventing any weakening of the position of the United Nations may be safeguarded if the Organization is kept in the picture and its appropriate organs are officially informed about developments. This will enable the Organization to render the most effective service if and when, at a later stage, it is seized with problems in regard to which other approaches have first been attempted."

¹ As quoted in *Documents on American Foreign Relations, 1954*, Harper & Brothers, New York, 1955, pp. 433-434.

HUMAN LOSSES IN 1946-54 IN INDOCHINA

I. FRENCH, LEGIONNAIRES, AFRICANS AND NORTH-AFRICANS:

<u>Killed in Action:</u>	22,860	<table> <tr> <td>Officers</td><td>1,667</td><td rowspan="3">{ Of whom 12,019 were Legionnaires, North Africans, Africans</td></tr> <tr> <td>Non-comm. Officers</td><td>2,882</td></tr> <tr> <td>Enlisted Men</td><td>18,311</td></tr> </table>	Officers	1,667	{ Of whom 12,019 were Legionnaires, North Africans, Africans	Non-comm. Officers	2,882	Enlisted Men	18,311
Officers	1,667	{ Of whom 12,019 were Legionnaires, North Africans, Africans							
Non-comm. Officers	2,882								
Enlisted Men	18,311								
<u>Disappeared</u> ¹ :	9,951	<table> <tr> <td>Officers</td><td>338</td><td rowspan="2">{ Of whom approximately 5,500 were Legionnaires, North-Africans, Africans</td></tr> <tr> <td>Non-comm. Officers and Enlisted men</td><td>9,613</td></tr> </table>	Officers	338	{ Of whom approximately 5,500 were Legionnaires, North-Africans, Africans	Non-comm. Officers and Enlisted men	9,613		
Officers	338	{ Of whom approximately 5,500 were Legionnaires, North-Africans, Africans							
Non-comm. Officers and Enlisted men	9,613								
<u>TOTAL:</u>	<u>32,811</u>								
<u>Wounded:</u>	45,246	{ 20,899 French 24,347 Legionnaires, North-Africans, Africans							

Comments:

- 97.3% of the killed-in-action belonged to the ground forces (the Navy lost 301 killed, of whom 27 were officers; the Air Force lost 270 killed, of whom 61 were officers).
- The proportion of Legionnaires among those killed and those who disappeared is very high, but the figures generally used are often challenged. For our part, we estimate 7,000 to 8,000 killed in action and 3,000 missing.
- For the French Expeditionary Corps, the most costly year in human lives was 1947: 5,345 killed, 9,790 wounded -- at a time when the Corps numbered no more than 70,000 personnel.
- At least two-thirds of those who disappeared are prisoners who died in the Viet Minh camps.

¹The French used the term "disappeared" in the sense of "unaccounted for". This category did not include "prisoners not returned", who were separately listed as such.

II. VIETNAMESE INCORPORATED IN THE EXPEDITIONARY CORPS

Killed in Action	14,093
Disappeared	12,830
Wounded	26,924

Comment:

These figures include neither the irregular forces, nor the Meos, Mans, Thais, etc. guerillas.

III. ARMIES OF THE ASSOCIATED STATES (Vietnam, Laos, Cambodia)

Killed in Action and Disappeared	17,600
Wounded	12,100

Same Comment as Above.

IV. PRISONERS

	Prisoners	Not Returned By Viet Minh
French	4,995	2,350
Legionnaires	5,349	2,867
African/North-African	6,080	2,290
Indigenous of the F.E.C.	14,060	13,200
Indigenous of the Associated States	9,404	9,247
<u>Total</u>	<u>39,888</u>	<u>29,954</u>

V. TOTALS

- Expeditionary Corps, plus Associated States (excluding the irregular forces):
Killed in Action and Disappeared: 77,334. Wounded: 84,270.
- Viet Minh: Number unknown, but estimated at 500,000.

ICC TEAMS IN CAMBODIA

FIXED TEAMS (5)

Number and locations specified in the Cease-Fire Agreement, Art. 12.

<i>Date established</i>	<i>Locations</i>
Aug. 25, 1954	1. Svay Rieng
Between Sept. 12 and Oct. 4, 1954	2. Phnom Penh
	3. Kratie
	4. Kampot
	5. Kompong Cham

MOBILE TEAMS (4)

No number or locations specified in the Cease-Fire Agreement.

<i>Date established</i>	<i>Locations</i>
Between Sept. 12 and Oct. 4, 1954	Battambang (2)
Between Oct. 4 and Dec. 31, 1954	Kompong Chhnang (1)
	Stung Treng

ICC TEAMS IN LAOS

FIXED TEAMS (7)

Number and locations specified in the Cease-Fire Agreement, Art. 28.

<i>Date established</i>	<i>Locations</i>
Sept. 7, 1954	1. Seno (Savannakhet)
Sept. 17, 1954	2. Pakse
Oct. 11, 1954	3. Sop Hao (Sam Neua)
Oct. 14, 1954	4. Phong Saly
Oct. 19, 1954	5. Vientiane
Oct. 20, 1954	6. Xieng Khouang
Mar. 21, 1955	7. Tchepone

MOBILE TEAMS (5)

No number or locations specified in the Cease-Fire Agreement.

<i>Date established</i>	<i>Locations</i>
Oct. 1, 1954	Luang Prabang
Oct. 7, 1954	Savannakhet
Oct. 21, 1954	Phong Saly
Nov. 28, 1954	Pakse
Nov. 27, 1954	Xieng Khouang

ICC TEAMS IN VIETNAM

FIXED TEAMS (14)

Number and locations specified in the Cease-Fire Agreement, Art. 35.

<i>Date established</i>	<i>North Vietnam</i>	<i>South Vietnam</i>
Sept. 11, 1954	1. Lang Son	1. Saigon
Sept. 17, 1954	2. Lao Kay	2. Cap St. Jacques
Sept. 20, 1954	3. Dong Hoi	3. Tourane
Oct. 7, 1954	4. Haiphong	4. Qui Nhon
Oct. 14, 1954	5. Tien Yen	5. Ba Ngol
Oct. 14, 1954	6. Vinh	6. Nha Trang
Dec. 13, 1954	7. Muong Sen	7. Tan Chau

MOBILE TEAMS

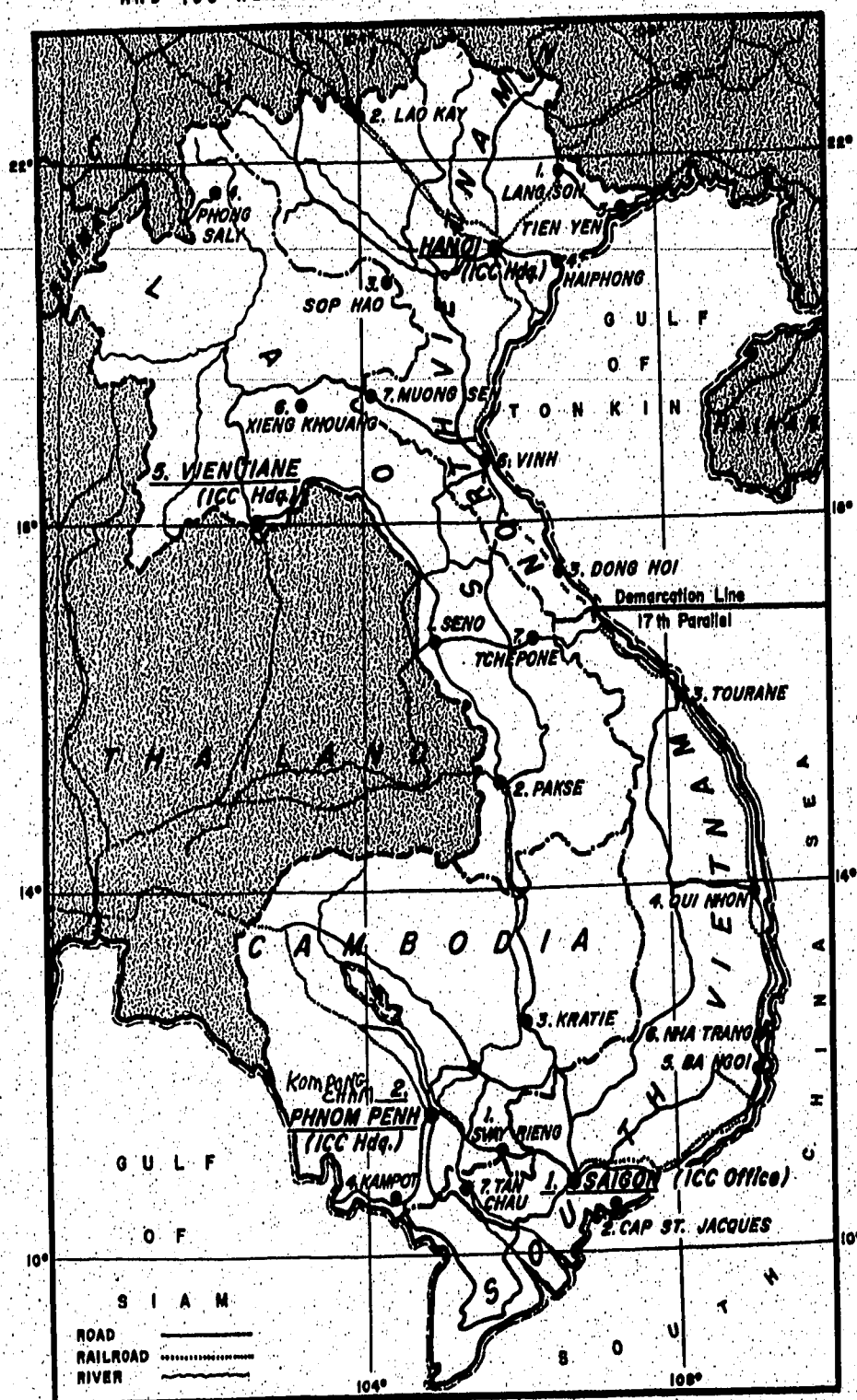
No numbers or locations specified in the Cease-Fire Agreement.

<i>Dates</i>	<i>Number of teams "sent out"¹</i>
1st year: Aug. 11, 1954 to Aug. 10, 1955	119
2d year: Aug. 11, 1955 to Aug. 1, 1956	34
Total 1st and 2d year	153
Total Aug. 11, 1954 to March 1, 1961	163

¹ In Vietnam, Mobile Teams were not permanently constituted and assigned to specific locations. They were established on an *ad hoc* basis—created and dissolved as needed, and given a new number for each new assignment. Consequently, the above figures are not comparable to those given for Mobile Teams in Cambodia and Laos. They do not refer to the number of Mobile Teams operating simultaneously, but rather to the number of assignments fulfilled by Mobile Teams (investigation of incidents, reconnaissance of border areas, control of regroupment operations, etc.).

² The discrepancy between this total mentioned in ICC's Eleventh Interim Report, para. 1, and the figure arrived at by totalling the number of Teams established (201) as indicated in ICC's eleven successive Interim Reports, is undoubtedly due to the fact that many Mobile Teams were unable to undertake their assignments because of the non-cooperation of parties to the Agreement. When withdrawn, the Teams were presumably deducted from ICC's cumulative list of Teams "sent out."

LOCATIONS OF FIXED TEAMS
AND ICC HEADQUARTERS IN INDOCHINA IN 1954



CENTRAL JOINT COMMISSION FOR VIETNAM—AGREEMENT NO. 24¹

Regarding the search for, the locating, the disinterment, regroupment and repatriation of the remains of deceased military personnel of both parties, including those who died in captivity—

In implementation of Article 23 of the Geneva Agreement stipulating that:

In cases in which the place of burial is known and the existence of graves has been established, the Commander of the Forces of either party shall, within a specific period after the entry into Force of the Armistice Agreement, permit the graves service personnel of the other party to enter the part of Vietnam territory under their military control for the purpose of finding and removing the bodies of deceased military personnel of that party, including the bodies of deceased prisoners of war. The Joint Commission shall determine the procedures and the time limit for the performance of this task. The Commander of the Forces of the two parties shall communicate to each other all information in their possession as to the place of burial of military personnel of the other party.

Delegations of the two parties to the CJC,² eager to ensure respect for the memory and the graves of deceased military personnel, have agreed as follows:

CHAPTER I. SEARCH FOR AND LOCATING THE GRAVES

(1) The contracting parties agree to proceed, each in the zone under his administration, with the search for and the locating of graves of military personnel of the other party who were killed in action, or who died during operations or in captivity.

Accordingly:

(a) They shall take all necessary measures to search for and locate, each in the zone under his administration, the graves of military personnel of the other party located there.

(b) In order to facilitate the search operations, the parties shall communicate to each other the lists of deceased military personnel and, when known, the assumed location of their graves.

These lists shall be submitted in successive lots taking into account, insofar as possible, the order of priority established for the disinterment operations.

They shall communicate to each other the replies received to search-requests presented by either side.

(1) Within a maximum period of 60 days from the submittal of requests, with respect to remains buried in the provinces where disinterments are planned during the first period in Annex I of the present agreement;

(2) No later than 30 September 1955, for the provinces where disinterments are planned during the second period in Annex I cited in the preceding paragraph.

However, the search-requests shall be submitted to the other side before 30 July 1955.

(c) In case a grave sought by one party has not been located by the other, a team, composed of a delegate of the Graves Registration Service and of a witness of the requesting party, may proceed to the locality mentioned in the search-request in order to undertake the necessary investigation with the help of local authorities. Each party shall assume all travel expenses incurred by this team, insofar as his own personnel are concerned.

CHAPTER II. DISINTERMENT—TRANSPORT—REGROUPMENT—REPATRIATION OF REMAINS

(2) Graves having first been located, the remains of deceased personnel may be disinterred at the request of the party to which the deceased belonged, either to be repatriated or to be collected in military cemeteries.

(3) Operations of disinterment, burial, transport, and shipment of remains shall be carried out according to the procedures customarily adopted by the party for whom they are being undertaken, on condition that these procedures do not constitute a danger to public hygiene.

(4) For the shipment of remains to be repatriated, each party may utilize the facilities of ports located in the zone of the other party.

Ships used for the transport of remains by either party may have access to these ports, in accordance with the conditions prescribed in the International

¹ Unofficial translation from the French by A. C. Lauve.

Conventions in force. However, military vessels may not be used for these shipments.

(5) The Party administering the zone shall provide the Disinterment Commissions with the manpower and the equipment needed for disinterment operations, and with all the necessary means of transport.

(6) Expenses incurred shall be chargeable to the party for whom the work is being undertaken, and shall be paid on the basis of the prevailing rates and in accordance with the procedure that will be the subject of a special agreement.¹

(7) At the time of disinterment and of reinterment of remains in new locations, ceremonies consisting of simplified rites, and fixed by the terms appearing in Annex II, may be held.

(8) Operations of disinterment, regroupment, transport and repatriation of remains shall be handled by Disinterment Commissions designated by the two parties and composed individually of:

From the side of the Command to which the deceased belonged:

One official from the Civil Registry Office.

One representative of the Graves Registration and Family Service.

One Physician.

From the side of the Command of the other party:

One liaison officer.

One representative of the local administration.

Each Commission shall include an interpreter furnished by the latter party.

(9) The number of Disinterment Commissions, and their terms of reference, are fixed in Annex I.

Disinterment operations must take place in the presence of the Disinterment Commission, but the two sides may undertake preparatory work on condition that they touch neither the coffins nor the remains of the deceased military personnel.

(10) When a Disinterment Commission is to operate in a province, all steps must have been taken to enable it to complete its mission within the prescribed period so that it will not have to return a second time to the same locality.

(11) The High Commands of the two parties undertake to ensure the safety of the Disinterment Commissions, and to provide them with all the facilities needed to accomplish, within the time allowed, the operations mentioned in the present chapter.

CHAPTER III.

Establishment of Military Cemeteries

(12) The contracting parties guarantee the right of deceased military personnel to a final resting place in cemeteries defined by mutual agreement.

(13) In the zone under their authority, the contracting parties shall grant each other without charge, and for a period that shall first be determined by negotiations between the respective governments, free usage of land tracts selected by mutual agreement and used as cemeteries, either permanent or temporary for the interment of the remains of deceased military personnel.

The party administering the zone shall retain ownership of these tracts.

This free usage of tracts includes, for each party, the right to proceed with all improvements deemed necessary for cemeteries: the construction of any buildings or necessary access roads, provided they do not endanger public hygiene.

In its zone, each of the two parties must avoid, insofar as possible, moving a cemetery properly established by the other party.

In case the local administration, for imperative reasons, should wish to have a properly established cemetery moved, an agreement must be concluded between the two parties. In this case, the local administration concerned must undertake, at its own expense, all work relating to the move.

The new location of the cemetery shall be selected by mutual agreement.

Before being implemented, plans for cemeteries and accessory or new installations must be submitted, for approval, to the party administering the zone.

(14) The labor needed to perform this work, and to ensure caretaking for the cemeteries, shall be provided by the party administering the zone, and shall be

¹ Translator's note: text of agreement not available.

paid on the basis of the prevailing rates and in accordance with a procedure that will be the subject of a special agreement.¹

(15) The list of cemeteries established by agreement between the parties is the subject of Annex III.

CHAPTER IV. RESTORATION OF ISOLATED GRAVES AND SMALL CEMETERIES

(16) Pending the regroupment of remains in cemeteries, or their repatriation, isolated graves and small cemeteries whose existence has been reported by either party, and has been verified by competent authorities of the other party, shall be maintained and preserved by the local administration, in accordance with the stipulations appearing in Annex IV.

(17) Graves of a permanent nature left on the spot shall be restored and maintained by the local administration at the request of the other party, and in accordance with the provisions of Annex IV.

These graves shall be restored within a period to be fixed by the Joint Graves Committee at the time the request for restoration is filed.

This period must be as brief as local conditions permit, and, as a rule, shall not exceed 8 months.

Until 1 July 1956, the party of the deceased may pay a single visit to these graves, during which the Commission responsible for this visit shall check the restoration work performed by the other party.

This Commission shall include from the requesting party:

One representative of the Graves' Registration Service.

One representative of the family of the deceased.

At the time of this visit, a ceremony may be organized under conditions fixed in Annex II.

(18) Expenses incurred for the restoration and maintenance of these graves shall be borne by the party of the deceased and shall be paid on the basis of the prevailing rates and in accordance with a procedure that will be the subject of a special agreement.²

CHAPTER V. IMPLEMENTATION OF THE TERMS OF THE PRESENT AGREEMENT

(19) With a view to ensuring proper implementation of Article 23 of the Geneva Agreement, and the present agreement, a Joint Graves Committee shall be created within the C.J.C.—

(1) The functions of this Joint Committee shall include, in particular:

The exchange of documentation regarding the search for bodies and the locating of graves;

The establishment of mutually agreed plans for the construction and restoration of cemeteries and isolated graves;

The establishment of schedules for the missions of Commissions for disinterment and visits to graves;

Supervision of implementation of the present agreement by the interested parties;

The settlement of any disputes; and

The settlement of financial questions.

(2) This Joint Committee shall be composed of 2 or 3 representatives of each party.

CHAPTER VI. DEADLINE FOR THE PERFORMANCE OF WORK COVERED BY THE PRESENT AGREEMENT

(20) All work mentioned in the present agreement must be completed not later than 1 July 1956.

(21) The work performance schedule shall be fixed by the Joint Graves Committee.

CHAPTER VII. GENERAL CONDITIONS

(22) Each side may import into the zone of the other party the equipment and supplies needed to perform the operations and work mentioned in the present agreement.

¹ Translator's note: text of agreement not available.

² Translator's note: text of agreement not available.

A detailed list of this equipment and of these supplies shall first be submitted for the approval of the party administering the zone into which they are to be imported.

These imports shall be exempt from all custom duties.

(23) The Joint Graves Committee shall set the terms of implementation. Disputes that cannot be settled by the Joint Graves Committee shall be submitted for arbitration to the C.J.C., which shall make the decision.

(24) Each party undertakes: to guarantee to families and relatives of the deceased, living in the zone under its control, freedom to visit the cemeteries and care for the graves; not to harass these families in connection with the pilgrimages; to ensure respect for the cemeteries and the isolated graves; to prohibit all damage to and destruction of graves of the other party.

(25) The terms of the present protocol may not be modified except by mutual agreement.

(26) The present agreement shall enter into force from the date of signature. Done at Quinh Khe, 1 February 1955.

For the General, Chief of the Delegation of the High Command of the People's Army of Vietnam.

COLONEL LE QUANG DAO.

General, Chief of the Delegation of the High Command of the French Union Forces in Indochina.

GENERAL DE BREBISSE.

ANNEX I—1ST PART

NUMBER OF DISINTERMENT COMMISSIONS—METHODS OF OPERATION OF A COMMISSION TO DISINTER, OR TO VISIT GRAVES

(A) The number of Disinterment Commissions operating in the zone controlled by the other side must not under any circumstances exceed 10. Work shall be executed according to provisions adopted by mutual agreement.

(B) Role and methods of operation of a commission to disinter, or to visit graves.

(1) The Commission to disinter, or to visit graves is charged with disintering the remains, or visiting the graves, of military personnel of the party that it represents. This Commission shall have no other function than that cited above, and shall not under any circumstances, interfere with the internal administration of the zone in question.

(2) The Commission must perform its mission in accordance with a schedule fixing the itinerary, the duration of its work, details regarding logistic support, and manpower placed at its disposal. This schedule shall be determined by the two Delegations to the Joint Graves Committee. Upon its arrival in a region, the Commission shall be accompanied by the representative of the local administration with whom it shall reach an understanding regarding performance of operations in the province in question. The common action program, established by the Joint Graves Committee shall be communicated to the regional authorities by the interested party 5 to 10 days before the Commission begins its trip.

(3) The Commission is not to take the initiative in establishing contact with the people. In case of need, it must apply to the representative of the administration and to the liaison officer.

(4) Representatives of the two parties on the Commission shall assist each other during their mission. In case of a disagreement, a report shall be made to the Joint Graves Committee for a decision.

(5) The authorities of the zone where the mission is being undertaken are fully and completely responsible for the safety and lodging of the Commissions.

(6) During the disinterment operations, or during the visits to graves, all acts must be avoided that might damage property belonging to the people. Public hygiene must be rigorously respected.

(7) The Commissions to disinter, or to visit graves must not be supplied with radios or other transmitting equipment.

As a rule, once every two weeks a member of the Commission for disinterment or visits shall be authorized to go and report on the work accomplished.

The party where the Commission is functioning shall facilitate this liaison agents travel (safe conduct pass, means of transport).

(8) The Commissions for disinterment or visits must not be supplied with photographic equipment or cameras.

However, should one of the parties express the wish to take a photograph of a grave or of a cemetery, it will be up to the liaison officer to assist him in this work.

(9) Means of transport used for the operations shall bear no markings or insignia.

(10) After completing its assignment in one region, and before going to another region for a new assignment, the Commissions must prepare a joint report on the work accomplished and send it to the Joint Graves Committee.

ANNEX I—2D PART

SCHEDULE OF OPERATIONS TO BE UNDERTAKEN FOR THE BENEFIT OF THE FRENCH UNION FORCES

First period

1st team: Hanoi—Disinterment for purposes of transferral. Regrouping of graves located in the provinces of Hadong, Gia Lam.

2nd team: Nam Dinh—Disinterment for purposes of transferral. Regrouping of graves located in the province.

3rd team: Hai Duong—Disinterment for purposes of transferral. Regrouping of graves located in the provinces of Haiduong, Hung Yen, Ninh Giang.

4th team: Bac Ninh—Regrouping of graves located in the province.

5th team: Vinh Phuc—Regrouping of graves located in the province.

6th team: Son Tay—Regrouping of graves located in the province.

7th team: Phu Ly—Regrouping of graves located in the province.

8th team: Ninh Binh—Regrouping of graves located in the province.

9th team: Bui Chu—Regrouping of graves located in the province.

10th team: Thai Binh—Regrouping of graves located in the province.

Second Period

1st team: Hai Ninh—Regrouping of graves located in the province.

2nd team: Lang Son—Regrouping of graves located in the province.

3rd team: CAO Bang—Regrouping of graves located in the province.

4th team: Bac Kan and Thai Nguyen—Regrouping of graves located in the province.

5th team: Phu to. Tuyen Quang, Ha Giang—Regrouping of graves located in the province.

6th team: Yen Bay, Lao Kay—Regrouping of graves located in the province.

7th team: Hoa Binh, Son La—Regrouping of graves located in the province.

8th team: Lai Chau—Regrouping of graves located in the province.

9th team: Thanh Hoa, Vinh, Ha Tinh, Dong Hoi—Regrouping of graves located in the province.

10th team: Reinterment in the cemetery of Bac Ninh.

ANNEX I—3RD PART

SCHEDULE OF OPERATIONS TO BE UNDERTAKEN FOR THE BENEFIT OF THE PAVN

1st Period

1st team: Thua Thien, Quang Tri.

2nd team: Quang Nam.

3rd team: Phu Yen, Khanh Hoa.

4th team: Binh Thuan, Ninh Thuan.

5th team: Bien Hoa, Thu, Dau Mot.

6th team: Baria, Poulo Condore.

7th team: Saigon-Cholon.

8th team: Giadinh, Tay Ninh.

9th team: Mytho, Tan An.

10th team: Ben Tre, Go Cong.

2nd Period

1st team: Sadec, Long Xuyen.

2nd team: Chau Doc, Hatien, Phu Quoc.

3rd team: Cantho.

4th team: Bac Lieu.

- 5th team: Soc Trang, Rach Gia.
 6th team: Vinh Long, Tra Vinh.
 7th team: Quang Ngai.
 8th team: Binh Dinh.
 9th team: Kontum, Gia Lai.
 10th team: Lam Vien, Dong Nai, Darlac.

ANNEX II

CEREMONIES

(1) When graves are visited:

Ceremony

Laying of wreaths—incense sticks—one minute of meditation.
 May be present at the ceremony:
 From the side of the party of the deceased:
 A representative of the Graves Registration Service and a representative of the families of the deceased.
 From the side of the other party: Members of the Commission for Visits, if they so wish.

(2) At the time of disinterment—Before excavation begins:

Ceremony

Incense sticks—brief speech addressed to the deceased to explain the reasons for disinterment and to request permission to move the body to a new location—one minute of meditation.

Will be present at the ceremony, if they so wish:
 Members of the Disinterment Commission and workmen participating in the work.

(3) Upon completion of construction of a cemetery:

Ceremony

Laying of wreaths—incense sticks—one minute of meditation.
 Will be present at the ceremony, if they so wish:
 Members of the Disinterment Commission and workmen having participated in the work.

ANNEX III

LOCATION OF PERMANENT CEMETERIES

(A) On the PAVN side (in the French Union zone):

- | | |
|----------------|-----------------|
| (1) Hue | (7) Saigon |
| (2) Tourane | (8) My Tho |
| (3) Qui Nhon | (9) Tay Ninh |
| (4) Kon Tum | (10) Long Xuyen |
| (5) Nha Trang | (11) Vinh Long |
| (6) Phan Thiet | (12) Can Tho |

(B) On the French Union Side (in the PAVN zone):

Hanoi: Larrievie Cemetery; Kien Lien Cemetery; and Quan Thanh Cemetery.
 Haiduong: Military Cemetery.
 Nam Dinh: Municipal Cemetery and Camp Carreau Cemetery.
 Haiphong: Admiral Courbet Cemetery; Municipal Cemetery, known as St. Etienne; and Nam Phat Cemetery.
 Naval Cemeteries: Ile de la Surprise Cemetery and Ile au Charbon Cemetery (known as Quai Courbet).
 Dien Bien Phu: Ossuary.
 Langson: Ossuary.
 Bac Ninh, Thi Cau: Former cemetery, plus 80,000 square meters ceded by the PAVN.
 Quang Yen: Military cemetery proposed by the French Union. The PAVN will reply later.

Taking into account the availability of transport and the possibility of reinterment in the above mentioned cemeteries, the Joint Graves Committee shall, with the concurrence of the parties, establish plans for the regrouping of bodies.

ANNEX IV

RESTORATION OF GRAVES—INSCRIPTION ON MARKERS

(1) Inscriptions to be placed on markers—

(a) PAVN Deceased (in the Vietnamese language)

Last name;
 First names;
 Function and rank;
 Unit; and
 Died on the field of honor on -----

(b) French Union Deceased (in the French language)

Last name;
 First names;
 Rank;
 Unit; and
 Died on the field of honor on -----

(2) With regard to graves that have been found, the local administration is responsible for maintaining them, protecting them, and installing a marker bearing the above inscriptions.

(3) With respect to graves left on the spot, and seeming to be of a permanent nature, they shall be maintained in accordance with the wishes of the other party. The marker must be of cement or stone on which the above inscriptions are carved.

(4) Models of the two parties' graves and markers are shown in the attachment.¹

(5) Signs to be placed on cemeteries—

(a) Cemeteries of the Armed Forces of the PAVN: "Cemetery of the Vietnamese People's Army."

(b) Cemeteries of the Armed Forces of the French Union Forces: "Cemetery of the French Union Forces."

REPUBLIC OF VIETNAM GOVERNMENT DECLARATION

(Unofficial Translation)

On March 30, 1956, the French and Vietnamese Delegations responsible for military talks signed an agreement setting up the schedule for the withdrawal of the French Expeditionary Corps, whose withdrawal had been requested by the Government of the Republic of Vietnam on January 19, 1956.

On the eve of the withdrawal, which attracts international attention because of the problems raised by the departure of French troops, the Government of the Republic of Vietnam wishes to recall the permanent principles of its policy.

The policy continues to be based upon the defense of the full and complete sovereignty of Vietnam, and on the maintenance of peace to which the Government and the people of Vietnam are deeply attached. It is therefore in the light of this dual principle that the problems concerning Vietnam will be resolved:

(1) THE WITHDRAWAL OF THE FRENCH EXPEDITIONARY CORPS

To safeguard its sovereignty, and in the interest of peace, the Republic of Vietnam considered that it could not accept the presence of any foreign troops on its territory nor the granting of military bases. Nor did it see the need to join any military alliance.

By virtue of this principle, the Government of Vietnam decided, in agreement with the French Government, upon the withdrawal of the French Expeditionary Corps.

The departure of French troops, which will immediately result in a reduction of the military potential below the 17th parallel, is a most striking proof of the Vietnamese Government's wish for peace.

(2) THE DEMARCATION LINE

True to this same policy of peace, the Government of the Republic of Vietnam will not have recourse to violence to resolve its problems and will preserve the

existing conditions of the present state of peace. It will not attempt to violate the demarcation line or the demilitarized zone as they exist under present conditions in Vietnam.

As it has declared on numerous occasions, it will seek by all peaceful means the reunification of the country, on which it has set its heart, notably by means of democratic and genuinely free elections when the conditions of freedom have been truly achieved.

(3) THE INTERNATIONAL CONTROL COMMISSION

The Government of the Republic of Vietnam, non-signatory of the Geneva Agreements, continues not to recognize their provisions. Nevertheless, it regards the International Control Commission as an agency working for peace. Because of common peaceful objectives, it will continue to extend effective cooperation, ensure the security of its members, and facilitate to the fullest extent possible the accomplishment of its mission of peace.

PRISONERS OF WAR IN INDOCHINA

(GENEVA SETTLEMENTS OF 1954 AND 1961-62)

(By Anita C. Lauve)

[This document, based on a report completed in May 1968, has been updated in 1976.]

[AUTHOR'S NOTE.—Figures used in this document, with regard to prisoners claimed, released, or not—returned following the 1954 and 1962 Geneva Settlements, are to be considered accurate only insofar as they reflect the sources cited. The reader will find that figures differ substantially according to the sources, even when the latter are referring to the same party's prisoners.

The reasons for these sometimes striking differences are many. Without so indicating, sources may have used figures relevant at the time of the ceasefire; or at the end of the period allotted for prisoner exchanges; or at the expiration of an authorized extension period; or even at the expiration of an unspecified number of years.

One authority may have included in his statistics only those indigenous forces that were part of the French Expeditionary Corps; another may have included indigenous personnel from the national armies of Cambodia, Laos, and Vietnam as well; while a third may have failed to indicate if all, some, or none of the indigenous prisoners are included in the statistics presented.

Discrepancies are also attributable to the fact that the same prisoners appeared on some lists as PW's, and on other lists as civilian or political returnees, as ralliers or deserters; or they did not appear at all because they had allegedly been released prior to the ceasefire. The International Control Commission, responsible for supervising implementation of the Geneva Settlements, commented on the confusion surrounding the prisoner issue. It noted the "glaring differences" between the categories and numbers of prisoners allegedly held or released by the parties, and the "widely contradictory" claims made by the different parties—and sometimes by the same party. It is not surprising, therefore, if the statistics available are still confusing.

The numerous factual statements and estimates cited throughout this study in relation to the prisoner issue, unless they are specifically identified in individual footnote references, are based on published and unpublished ICC reports as well as on government documents and files.]

I. BACKGROUND

1. THE GENEVA SETTLEMENT OF 1954

When the Geneva Agreements were signed, in July 1954,¹ only three of the nine governments represented at the Geneva Conference—those of France, Vietnam, and the USSR—had ratified the 1949 Geneva Conventions on Prisoners

¹For the texts of the Agreements On the Cessation of Hostilities in Vietnam, Laos, and Cambodia, respectively see "Miscellaneous No. 20 (1954)," "Further Documents Relating to the Discussion of Indo-China at the Geneva Conference, June 16-July 21, 1954,"

of War and Civilian Persons. And of the three states selected by the Conferees to supervise implementation of the Agreements (Canada, India, Poland) only one—India—had ratified the Geneva Conventions.

The Vietnam Agreement called for the release of all prisoners of war (PW's) and civilian internees (CI's) held by either side. It specified that all prisoners were to be surrendered to "the appropriate authorities" of the other party. Once surrendered, prisoners were then to be given—by their own party—"all possible assistance in proceeding to their country of origin, place of habitual residence, or the zone of their choice" (Art. 21c). The Agreement did not provide the safeguards against forcible repatriation that had been written into the Korean Armistice Agreement. There was no stipulation requiring the International Control Commission (ICC) to take custody of, or even to interview, those prisoners (foreign or Vietnamese) who might not want to be surrendered to the side from which they had been captured. The ICC was required only to "control" each side's compulsory surrender of prisoners to the other side (Art. 36c).¹

The Laos and Cambodia Agreements of 1954, on the other hand, provided that only foreign prisoners were to be surrendered to the other side. Presumably, this decision was made because there was to be no partition of those countries, and because the native dissident fighting elements in each were supposed to be rapidly integrated into the national community. Nationals of Laos or Cambodia captured within their own country were simply to be released; however, there was no specific requirement that they be released within their respective countries. Nor was there any provision for verifying that any releases that allegedly had taken place elsewhere—for example, in North Vietnam—were genuine and that the former prisoners' continued residence in the country of their release was voluntary.

Results in Cambodia

The Agreement set no time limit for the release of prisoners, foreign or national. It simply stated that all should be released "after the entry into force of the present Armistice Agreement" (Art. 8a).

In January 1955, after both sides had claimed to have released all captives qualifying as PW's or CI's, the Viet Minh/Khmer Resistance Forces charged the Royal Government with holding 375 prisoners in violation of the Agreement. The government contended that over half of the 375 were ordinary criminals, and that 155 were Viet/Cambodians (Vietnamese nationals resident in Cambodia) who, having collaborated with the Viet Minh invaders, were subject to expulsion from Cambodia under Article 4c of the Geneva Agreements on the Cessation of Hostilities in Cambodia.

Upon examining the dossiers, the ICC concluded that 117 of these 155 were indeed Viet/Cambodians who should have withdrawn with the North Vietnamese troops in September 1954, but it did not insist that the Democratic Republic of Vietnam (DRV) remove them. It took the position that it was up to the Cambodian Government to negotiate with North Vietnam. After 18 months of futile negotiations with the DRV, which clearly had no wish to accept the Viet/Cambodians, the Royal Government simply released them, and so informed the ICC.²

As for 900 residential prisoners claimed by Cambodia, the DRV alleged that some had been released in Vietnam, while others, released in Cambodia, had subsequently migrated to Vietnam—allegations that the North Vietnamese did not attempt to prove, and which were challenged by the Cambodian Government to no avail. The ICC refrained from issuing a mandatory recommendation that the DRV substantiate the alleged releases.

¹The 1954 Geneva Agreements were drafted in French, and the verb was *contrôler*, which in that language means "to check or verify." Consequently, the term "to control," as used in the translation of these agreements and in the title of the ICC, was intended to be understood in the meaning of the original, without the English connotation of restraint and regulation.

²*Fifth Interim Report of the International Commission for Supervision and Control in Cambodia*, Chapter VI. (Hereafter, ICC reports will be referred to simply by name of country and number of report.)

Results in Laos

When the thirty-day period allowed for the release of prisoners elapsed (on September 5, 1954), no foreign prisoners had been released, and the "bulk of the Laotian prisoners remained unaccounted for."¹

Shortly after the deadline, 109 Viet/Minh prisoners (alleged North Vietnamese "volunteers") and 195 French Union Forces (FUF) prisoners were exchanged. In accordance with the Viet Minh/Pathet Lao (VM/PL) proposal, foreign prisoners were exchanged in North Vietnam at Sam Son in Thanh Hoa Province.

In June 1955, the ICC reported that "by and large most of the French nationals seem to have been released."² The VM/PL had, in fact, surrendered 699 FUF prisoners, but had failed to account for 70 PW's.

As for Laotian prisoners, the French/Laotian side finally agreed that these, too, would be handed over in accordance with VM/PL demands,³ even though the Laos Agreement did not require that these prisoners be surrendered to the other side. By June 1955, the VM/PL had released only 150 such prisoners, leaving unaccounted for 988 PW's and 878 CI's, a total of 1,846. Though VM/PL claimed to have released 1,079 PW's and 61 CI's prior to the cease-fire, the French/Laotian side pointed out that the VM/PL nominal list of those allegedly released did not correspond to its own list of missing prisoners.⁴

The Communists, for their part, conceded that the French/Laotian side had released 220 VM/PL prisoners, but charged that it still held 692. The Communist figures were not broken down by either nationality or category.⁵

At the end of 1954, the ICC concluded that the schedule of releases, as laid down in the Geneva Agreement, had not been adhered to. It noted that the issue of PW and CI releases had "been complicated by the contradictory statements emanating not only from the two parties, but also from the same party". The Commission found a number of possible causes for the serious discrepancies in the parties' statements: Different classification (CI or PW) of the same prisoner; defections and desertions, "common in any warfare of a guerrilla nature"; prisoners who had rallied to their captors; and, because of the nature of jungle combat, more numerous escapes, and deaths from exposure, malnutrition, and tropical diseases.⁶

Charitably, the ICC did not include a possible retention of some prisoners.

Results in Vietnam

Prisoner releases in Vietnam were effected on the basis of two separate agreements: One, an informal understanding reached through Soviet and Chinese intermediaries immediately prior to the opening of the Geneva Conference (which coincided with the fall of Dien Bien Phu); the other, a formal arrangement concluded during the Conference and incorporated in the final Agreement (Art. 21).

Under the former, the French had reluctantly accepted the DRV's participation in the Geneva Conference, with the understanding that the Viet Minh would permit the French to evacuate their wounded from Dien Bien Phu.

At the Conference, Ho Chi Minh's representative, Pham Van Dong, suggested in his first speech that both sides evacuate their seriously wounded. Three days later, however, when French negotiators arrived at Dien Bien Phu to make arrangements for the actual evacuations, the Viet Minh listed additional conditions not put forward at Geneva: (a) No repairs of the airstrip would be permitted that would allow the French to land C-47's to evacuate the wounded; (b) the French would be allowed initially to evacuate only 450 wounded PW's; (c) the French would not be permitted to evacuate any Vietnamese PW's; (d) during the evacuation, the French had to refrain from bombing Colonial Route 41 so as to permit the Viet Minh to evacuate their own wounded from Dien Bien Phu.⁷

¹ Laos, *First Interim Report*, p. 19, para. 89.

² Laos, *Second Interim Report*, para. 114.

³ Laos, *First Interim Report*, paras. 88 and 90.

⁴ *Ibid.*, para. 100(d).

⁵ Laos, *Second Interim Report*, paras. 113-115, and appendix K.

⁶ Laos, *First Interim Report*, paras. 102-103.

⁷ Exactly how many wounded were at the base when it fell is not known. One French authority states that 4,436 were wounded between March 13, when the Viet Minh launched their first attack, and May 5, immediately before the final assault. See Jules Roy, *La Bataille de Dien Bien Phu*. René Julliard, Paris, 1963, p. 569.

To facilitate rapid evacuation of wounded French Union prisoners, the French sought to repair the airstrip, and offered to airlift all wounded Viet Minh to any place specified by the North Vietnamese Army. The DRV rejected both the request and the offer, but permitted the French to start evacuating their own wounded prisoners. During the first week, the French were able to remove only 133 of their wounded PW's, none of whom was Vietnamese. In response to United States and Government of Vietnam (GVN) protests at Geneva against the Viet Minh-imposed discrimination, the DRV claimed that the French had initially agreed to exclude Vietnamese PW's, a statement heatedly denied by the French.

It was evident that the Viet Minh had two objectives in mind: To drive a wedge between the French and the Vietnamese, and to prolong the evacuation of French wounded from Dien Bien Phu as much as possible in order to keep Route 41 neutralized. Taking advantage of the bombing halt, they began moving troops and artillery along Route 41 to attack French positions in the Delta. The French promptly resumed the bombing.

The air evacuation of the wounded French Union Forces proceeded slowly in May and June; eventually, the evacuees included some Vietnamese. But the French were allowed to evacuate only the most severely wounded prisoners. The vast majority of almost 10,000 men captured at Dien Bien Phu were compelled to march hundreds of miles to primitive prisoner of war camps while constantly being subjected to cleverly planned physical hardships and debilitating brain washing sessions. The death rate was appalling.

Meanwhile, negotiations between the French and the North Vietnamese continued at Geneva and at Trung Gia in North Vietnam. On Bastille Day—July 14—each side exchanged 100 wounded PW's at Vietri and Mai-Thon (North Vietnam).

The Associated Press correspondent in Hanoi described the physical condition of the PW's as "catastrophic". Some prisoners reported that of the men who had been sent on the "death march" from their camp near Dien Bien Phu, 15 had died daily, and they expected that those who were not returned promptly would die of cholera, dysentery, or malnutrition. French authorities in Saigon began censoring correspondents' stories to delete realistic descriptions of the prisoners' condition, as well as such terms as "death march" and other revealing statements made by the PW's themselves, in order to avoid distressing the families of prisoners and lessening the chances of release for those still in captivity.¹

The formal exchange of prisoners followed the conclusion of the Geneva Conference. Under the terms of the Agreement, the deadline for releases ended on August 28 in North Vietnam, August 31 in Central Vietnam, and September 10 in South Vietnam.²

According to French officials in Saigon at the time, the total number of missing personnel exceeded 30,000, of whom 17,000 were known certainly to have been taken prisoner alive. The same sources estimated that the DRV also held about 9,600 indigenous prisoners from the armies of the Associated States (Cambodia, Laos, and Vietnam), in addition to those indigenous prisoners who, as members of the French Expeditionary Corps (FEC), were included in the 30,000 figure.

The French side, for its part, admitted holding many more prisoners than initially claimed by the DRV. It eventually released over 68,000, the majority of whom were CI's.³

Prisoner exchanges, supposed to begin immediately after the cease-fire, were delayed because of differences over procedures. The Viet Minh, in particular, refused to begin exchanges until they had received a complete list of all PW's and CI's that the French expected to release. In Mid-August, the ICC reported

¹ During the Geneva Conference, the U.S. Air Force repatriated to France 500 French Union prisoners of war who had been wounded at Dien Bien Phu.

² A U.S. hospital ship, requested by the French to evacuate wounded prisoners of war, left Saigon on September 9, with 725 sick and wounded aboard, of whom only 180 actually were PW's—a reflection of the slowness with which the Viet Minh were releasing prisoners to the French.

³ Figures pertaining to PW's and CI's of Vietnamese nationality were considered only roughly accurate because of the nature of the war and its long duration. The use of regular and irregular forces, frequent shifts in allegiance, numerous desertions, and the large number of civilians alternately interned and released throughout Vietnam made accurate record-keeping of these prisoners virtually impossible.

having been able to effect a compromise whereby the French agreed to prepare such a list and the DRV agreed to begin exchanges before receiving the full list.¹ The deadline for exchanges in the North was then extended by 8 days.

Three days after the fall of Dien Bien Phu, the Viet Minh had broadcast a communique that ended with the statement:

"Applying President Ho Chi Minh's and the Democratic Republic of Vietnam's policy of clemency toward prisoners of war, the People's Army of Vietnam has treated prisoners of war well and has given them the necessary care."

As the Viet Minh began releasing prisoners, top French officials in Saigon and Paris privately expressed deep concern about publicity, in France and in the United States, regarding the condition of the returned PW's, whose treatment by the Viet Minh had admittedly been cruel and horrible beyond belief. They urged—as they had with respect to the first PW's returned from Dien Bien Phu—that the issue be soft-pedalled while releases were still going on.²

By the deadline for the release of all prisoners (PW's and CI's), the FUF Command claimed to have released 65,477 Viet Minh prisoners and acknowledged receiving 11,708 prisoners from the People's Army of North Vietnam (PAVN).³

Not included in the number of announced releases were five U.S. Air Force personnel who had been taken prisoner by the Viet Minh at Tourane during the Geneva Conference. Released to the French, they had been turned over to the U.S. Military Assistance Advisory Group before the deadline. According to the U.S. military authorities, the American PW's seemed to have fared better than the average prisoners of the Viet Minh. Although all five had suffered some degree of physical deterioration, none appeared to be seriously ill.

Both sides continued to release prisoners. About 2 months after the deadline, the French reported to the ICC that they had released a total of 68,105 prisoners (9,071 PW's and 59,034 CI's). They acknowledged receiving 14,032 prisoners (13,377 PW's and 655 CI's), but accused the PAVN of failing to release 9,537 PW's,⁴ a figure that did not include about 13,000 indigenous, mostly Vietnamese, PW's from the FEC, and over 9,000 PW's from the national armies of the Associated States.⁵

In response to an ICC query, both sides asserted that they had fulfilled their obligations under Article 21 of the Geneva Agreement, and "had not retained any prisoner of war or civilian internee of the other side."⁶

During the exchange of PW's, the question of alleged FUF deserters arose. The ICC was apprised of a group of several hundred Africans and Foreign Legionnaires held by the PAVN Command, some of whom, the PAVN claimed, had rallied to the DRV side. According to the ICC, the two Commands, "by common agreement excluded these persons from the exchange of prisoners of war operations" while the matter was further examined. Meanwhile, the ICC asked each side to indicate the number of deserters involved and its position on the issue. The DRV was specifically asked to furnish a nominal list of all those in custody. It never did so.⁷

Within the next 6 months, the PAVN released to the French 268 of these alleged "deserters"—"ralliers", and sent 394 to Communist countries in Europe via China.⁸

One year after the end of the French war in Indochina, the two sides reported to the ICC on the status of claims and counterclaims regarding prisoners of war. The FUF Command reported that it had presented claims for the return of

¹ The Viet Minh never gave the French complete nominal lists of FUF/PW's held, allegedly released in North Vietnam before the cease-fire, or repatriated to their European or African countries of origin.

² Quoted in "Roy, *La Bataille*," p. 557.

³ When one of the last contingents of 400 French Union PW's to leave Dien Bien Phu reached the point of release in North Vietnam (Vietri) 10 weeks later, there were only 76 skeletal survivors. See "Historia," hors série 25, 1972, "La Lente Marche à la Mort du Convol 42," pp. 132-139.

⁴ The PAVN claimed to have received 12 fewer prisoners, and released 175 more prisoners than the FUF figures indicated. Vietnam, *Interim Report*, para. 60.

⁵ Vietnam, *First Interim Report*, appendix III, p. 38.

⁶ The Commander-in-Chief of the FUF in June 1954, General Paul Ely, wrote in his memoirs that a minimum of 20,000 prisoners claimed by the French/GVN side had disappeared. Of these, 15,000 Vietnamese were believed to have been inducted into the PAVN. Ely did not speculate on the fate of the remaining 5,000 PW's.

⁷ See General Paul Ely, *L'Indochine dans la Tourmente*, Plon Paris, 1964, p. 214.

⁸ Vietnam, *First Interim Report*, para. 68.

⁹ Vietnam, *First Interim Report*, paras. 71 and 72.

¹⁰ Vietnam, *Third Interim Report*, para. 7, and *Fourth Interim Report*, paras. 7 and 8.

30,373 PW's, to which it had received 28,793 replies from the PAVN.¹ According to these replies:

4 percent of all FUF prisoners had died,

17 percent had been handed over,

0 had escaped,

8 percent had rallied to the DRV side (a figure that included 5 percent repatriated through China), and

71 percent were "unknown or not on record".²

With regard to PAVN prisoners, the French reported receiving 12,856 claims to which it had submitted 12,647 replies indicating that:

7 percent of the PAVN prisoners had died,

59 percent had been handed over,

12 percent had escaped, and

20 percent were "unknown or not on record".

The PAVN figures differed in that they reported having submitted 2,308 more claims, and received 1,18 fewer replies. The Viet Minh made no attempt, however, to present an analysis of either their own or the French replies.

In 1958 the ICC, still acting as a clearinghouse for inquiries about missing prisoners, began to explore the possibility of having the Red Cross societies of North and South Vietnam undertake the search for such prisoners in their respective areas, but it was never able to persuade Hanoi and Saigon to accept this solution.³ Claims and counterclaims continued to be exchanged through the ICC, and some additional releases took place.

In 1962, 40 French PW's were returned to France (with their Vietnamese families) and some were reportedly tried as deserters. In the 1960's, there were a number of unpublicized releases and repatriations of FUF prisoners to Central and Eastern Europe, to the Middle East and to Africa.

In 1968, the most recent statistics indicated that there remained 2,785 FUF/PW's who had not been officially declared dead, or whose repatriation had not been verified. Of these, 434 were French, 1,434 were Foreign Legionnaires, and 917 were Africans.

In 1971, in response to a deputy's question in the National Assembly regarding the alleged presence of French PW's in North Vietnam, the French Foreign Minister provided a written reply⁴ in which he stated that to the Government's knowledge there were "no members of the French Far East Expeditionary Corps held against their will in North Vietnam".

2. THE GENEVA SETTLEMENT OF 1961-62

When the Geneva Conference on Laos convened in May 1961, all but two of the fourteen states represented had ratified the 1949 Geneva Conventions on PW's and CI's. The two exceptions were Canada and Burma.⁵

With respect to prisoners, the U.S. objective at the Conference was to secure the immediate release of all PW's and CI's under conditions that preserved the principle of the captives' freedom to choose their ultimate destination. However, the Communist delegations strongly opposed the American proposals on three points:

(1) The U.S. draft called for the release of all prisoners held by the three Laotian parties⁶ "or by any member of the Conference." As it was believed that some Laotian as well as foreign prisoners captured in Laos had been transferred to North Vietnam, the United States considered the quoted phrase a necessary stipulation to ensure the release of all prisoners.

Both the People's Republic of China (PRC) and the DRV took exception to the phrase on the grounds that the conflict was a "civil war" and, consequently, no members of the Conference other than the Laotians themselves could possibly

¹ The PAVN claimed to have received 67 more claims and provided 1,147 more replies than the FUF figures indicated.

² French sources estimated that in addition to the 4 percent reported as dead by the PAVN, at least two-thirds of the 9,951 French and Foreign Legion PW's, listed as "unknown" or "disappeared," had in fact died in the Viet Minh PW camps. See the Extract from *Historia*, Hors Série 25, 1972, pp. 164-5, 1.

³ Vietnam, *Eighth Interim Report*, para. 22.

⁴ *Journal Officiel*, June 17, 1971.

⁵ Canada signed the Conventions in 1949 but did not ratify them until 1965; Burma has never adhered to the Conventions.

⁶ The Royal Lao faction, the Pathet Lao, and the Neutralists.

be holding prisoners. Their argument prevailed, and the phrase was omitted from the Protocol.

(2) Although the U.S. draft proposed that only foreign prisoners be released to the ICC for repatriation, it left the way open for the ICC to control the release of Laotian prisoners as well by noting that the question would "require further consideration" by the Conference after the Lao factions had concluded the expected cease-fire agreement.

The USSR suggested that the surrender of foreign prisoners might be handled through diplomatic channels or if the United States preferred, through the ICC. Other Communist delegations concurred, the DRV delegate stating pointedly that his government had, of course, no direct interest in the matter—since there were no PAVN troops in Laos, there naturally were no PAVN prisoners to be turned over.¹

The most unfriendly comment on the U.S. proposal came from the Indian delegate. He did not object to the transfer of foreign prisoners through either diplomatic or ICC channels, but he pointed out that foreigners who had intervened in Laos should not expect to be given "extra-territorial" rights any more than foreigners who "misbehaved" in the United States could expect to receive such special treatment there. The comment was not of a nature to encourage the United States to pursue its efforts to have the ICC—chaired by India—control the release of foreign prisoners.

The final Protocol provided that foreign military personnel and civilians be turned over by the Royal Government to representatives of their own governments. The ICC was given no role in the transfer.²

As for Laotian prisoners, the Communist Pathet Lao categorically rejected any suggestion that the ICC might be asked to control their releases. Both the Pathet Lao and the Neutralists had earlier turned down a proposal by the Royal Lao faction that the International Committee of the Red Cross (ICRC) supervise releases. Because most Conference delegates agreed that the establishment of modalities for the release of Laotian prisoners was solely within the competence of the Laotians, the final Protocol took no cognizance of the problem.

(3) One reason for the U.S. proposal that foreign prisoners be turned over to the ICC was to ensure continuity of the freedom of choice guaranteed in the Korean Agreement. The U.S. delegate said that safeguarding that freedom was "a matter of principle for the United States" and had to be included. To support this position, he referred to the 1954 Geneva Agreement on Laos, citing in particular Article 16c, which provided that foreign prisoners be given "all possible assistance in proceeding to the destination of their choice".

But all the Communist delegates, particularly those of China and the DRV, vigorously opposed granting freedom of choice. They insisted that prisoners be allowed to proceed only to their "country of origin". The Chinese picked up the U.S. delegate's partial quotation from the 1954 Geneva text and pointed out that the full text called for the surrender of prisoners to their own side *before* they were to be given their choice of destination.³ Even the Indian delegate suggested that prisoners be returned to their "own countries".

The final Protocol provided that foreign prisoners were to be turned over "to the Governments of countries of which they are nationals" before being allowed to "proceed to the destination of their choice".⁴ After the delegates had agreed on this wording, the Chinese delegate noted that the "destination of their choice" meant their country of origin, "and cannot possibly have any other meaning."⁵

Obviously, the Protocol as signed did not truly support the principle of freedom of choice, for it contained no reliable safeguard against forcible repatriation; a prisoner who was a national of a Communist country, once released to its government, could hardly expect to enjoy freedom of choice thereafter.

Release of foreign prisoners, 1962

Article 7 of the Laos Protocol called for the release of all foreign prisoners within 30 days after the Protocol was put into force, i.e., by August 22, 1962.

¹ The DRV then had an estimated 8,000 to 10,000 troops in Laos, some of whom, it was later revealed, had been captured by the Royal Lao forces.

² *Protocol to the Declaration on the Neutrality of Laos* (hereafter cited as *Laos Protocol*). Geneva, July 23, 1962.

³ The 1954 Geneva Agreement did so stipulate, but when North Vietnam violated the Agreement by sending hundreds of Legionnaires to Communist countries in Eastern Europe without first releasing them to the French Command, it did so with China's help.

⁴ *Laos Protocol*, art. 7.

⁵ See documents of the International Conference on the Settlement of the Laotian Question, Geneva (May 10, 1961–July 23, 1962), U.S. Verbatim Minutes, 40th Restricted Session, LAOS/USVR/40, November 1, 1961.

Four British civilians (two doctors and two diplomats), captured by the Pathet Lao in May 1961, were actually released shortly after formation of the coalition government in Laos and almost a month before the Protocol was signed. They reportedly showed the effects of a very long "walk to freedom."

By contrast, despite repeated assurances by PL representatives that the prisoners claimed by the United States (5 U.S., 1 Filipino, and 2 Thai) would be turned over within "a few days" after the signing of the Protocol, the eight men were not released until 5 days before the end of the 30-day period. (The PL Vice Premier, Prince Souphanouvong, first blamed the delay on difficulties of transport, and later on differences with his colleagues.) When eventually these prisoners were turned over by the Pathet Lao to the coalition government, and by the latter to the U.S. Ambassador, they reportedly showed the physical effects of severe conditions of detention.

In a surprise move, on the deadline date for releases the Royal Laotian forces turned over to the coalition government, for transfer to the DRV, six North Vietnamese prisoners of war, and simultaneously released to the press the men's signed statements identifying the PAVN units with which they had entered Laos. Four of the prisoners asked to be returned to North Vietnam; two wished to remain in Laos. But the DRV, having denied the presence of its troops in Laos, would not recognize the North Vietnamese as PW's. It did not, therefore, demand that all six prisoners be transferred to DRV control *before* being given a choice of destination. Yet, such a proviso had been included in the Protocol at DRV insistence. It was obviously more important to Hanoi to maintain the fiction of its non participation in the armed conflict in Laos than it was to ensure the return of its nationals or their right to be treated as prisoners of war.

Three weeks after the deadline for releases (possibly to offset the bad publicity that had resulted from irrefutable proof of the PAVN presence in Laos), the Pathet Lao turned over to the Royal Government four South Vietnamese, allegedly captured in Laos, belonging to the Army of the Republic of Vietnam (ARVN)—a charge that the GVN denied.

Release of Laotian prisoners, 1962

In June 1961, a year before the end of the Laos Conference, leaders of the three Lao factions issued a joint communique in which they agreed that the release of Laotian prisoners would be an "immediate task" of the proposed provisional coalition government.² But they failed to set a deadline for releases, presumably because this was to be part of a negotiated cease-fire agreement—an agreement that was never concluded.

No information appears to be available about the number of prisoners claimed by the several Lao parties after the Laos Conference. It is possible—even probable—that no Lao faction kept complete records of forces missing or prisoners taken, for many prisoners were impressed into the captor's forces, while others were released and sent back to their villages.

The Rightist forces, according to fragmentary reports, turned over 62 Lao prisoners to the coalition government at the same time that they surrendered the six PAVN PW's mentioned above. A month later, they turned over 55 "political prisoners", after the tripartite Mixed Commission for Integration of the Administration had called for the release of all such prisoners within 2 weeks. But it was not until mid-1963, 12 months after formation of the coalition government, and after the Neutralists had broken with the Pathet Lao, that the Rightists announced the release of Neutralist General Amkha and other Neutralist PW's.

As for the Neutralists, when they finally broke with the Pathet Lao faction they released all Rightist prisoners except those they had previously turned over to the Pathet Lao. The latter released some prisoners after the 1962 Conference but kept the hard-core anti-Communists, particularly those who were senior officers of the Royal Lao Army. These PW's were believed to have been transferred to North Vietnam.³

¹ Maj. Laurence R. Bailey and Sgt. Roger Ballanger—U.S. Army; and civilians Grant Wolfkill (NBC), Ed Shore, Jr., and John P. Morrow. See Wolfkill and Rose, *Reported to be Alive*, p. 62.

² "Joint Communique of the Three Princes on the Problem of Achieving National Concord by the Formation of a Government of National Union," Zurich, June 22, 1961. See documents of the International Conference on the Settlement of the Laotian Question, Geneva (May 10, 1961–July 23, 1962), LAOS/DOC/18, June 26, 1961.

³ After the 1954 cease-fire in Vietnam, the DRV returned few of the captured officers from the Vietnamese National Army.

Foreigners captured in Laos after the 1962 Conference

After the 1962 Geneva settlement, the first instance of foreign civilians captured in Laos and held as "prisoners of war" occurred on September 5, 1963, when the Pathet Lao shot down an Air America C-46 carrying food to an isolated guerrilla unit in PL-held territory. As the plane was operating with the approval of only two factions of the tripartite Lao Government—the Rightists and the Neutralists—the Pathet Lao maintained that it was operating illegally.¹

Unable to obtain information about the fate of Air America's seven-man crew from the PL faction in the coalition government, the United States appealed to the ICRC, which in turn referred the matter to the Lao Red Cross. The latter sent an inquiry to the ICRC, which passed it on, with a covering letter to the leader of the PL political faction, Vice Premier Souphanouvong. The Pathet Lao replied to the ICRC charging that Air America, by overflying PL territory, had violated the 1962 Geneva settlement. They contended that "documents" found on the captured crew members proved that the plane was engaged in military activities against PL areas; therefore, the captives were being considered "prisoners of war". (The allegedly incriminating documents, though promised, were never produced.)

Subsequently, the PL radio stated that there could be no third-party mediators. The United States would have to deal directly with the PL "military" authorities regarding the release of the C-46 crew.

Not until 7 weeks after the incident did the Pathet Lao provide a list of the crew, according to which two members were dead (the U.S. pilot and co-pilot),² and five had been captured (1 U.S.,³ 3 Thai, and 1 Chinese UK subject).

Shortly thereafter, the PL radio announced that the prisoners would be "tried by the People", but 2 weeks later PL Minister Vongvichit assured the ICC Chairman that the crewmen would only be "investigated".

Thereafter, despite repeated efforts, neither the United States nor its allies, nor such international agencies as the ICRC and ICC were able to obtain the release of the prisoners or an opportunity to communicate with them. To their number was added a U.S. civilian pilot shot down in 1965.⁴

In addition to these civilians, by the end of 1968 over 140 American military personnel were listed as missing in Laos.⁵ Some were believed to be held in Pathet Lao territory.

For its part, the Royal Government had in custody, in 1968, at least 50 PAVN prisoners of war, captured in Laos where the DRV consistently asserted it had no military forces.

II. CLASSIFICATION OF PRISONERS

1. CATEGORIES IN THE 1954 AND 1961-62 AGREEMENTS

The complexity of the prisoner issue, beginning with the simple matter of definition and categorization, is well illustrated by the 1954 and 1961-62 agreements.

1954

The three Geneva Agreements of 1954 referred to two categories of prisoners: Prisoners of war (not further defined); and civilian internees, a term "understood to mean all persons who, having in any way contributed to the political and armed struggle between the two parties, have been arrested for that reason or kept in detention by either party during the period of hostilities." (Vietnam, Art. 21b.⁶)

¹ Because of the Communists' determination to control the Ho Chi Minh trail in Laos, the Rightist and Neutralist forces were never able to conclude with the Pathet Lao the cease-fire agreement that was to have integrated all Lao forces and territory after formation of the coalition government in June 1962. As a result, opposing forces remained intermingled in many areas.

² Capt. J. C. Cheney and C. G. Herrick, civilian.

³ Eugene DeBruin, who escaped from his Pathet Lao captives in 1966 with a recently captured Navy lieutenant, Dieter Dengler. DeBruin was unable to keep up and was left on a hilltop to await rescue later. He was never seen again. Lt. Dengler was picked up 23 days after the escape and returned to friendly control.

⁴ Ernest C. Bruce, released during "Operation Homecoming," who testified before the Select Committee, March 31, 1976. See hearings, part 3.

⁵ Only two of this group returned alive. In 1973: Lt. Col. Walter M. Stischer and Maj. Edward W. Leonard.

⁶ The Pathet Lao subsequently insisted upon drawing a distinction between "civilian" and "political" internees. (See below.)

1961

In the Joint Communique issued in Zurich in June 1961, the three Lao Princes spoke of the proposed release of all Lao prisoners whom they referred to as "political prisoners and detainees." The term "prisoners of war" was not used, presumably because the parties had agreed to treat the release of Lao prisoners as strictly an internal matter, subject neither to decisions of the Laos Conference nor to the provisions of the 1949 Geneva Conventions.

1962

In the Laos Protocol of 1962, the article dealing specifically with prisoners (Art. 7) referred to "foreign military persons and civilians". Elsewhere, the term "foreign military personnel" was used, and was defined in Article 1(a) as including "members of foreign military missions, foreign military advisers, experts, instructors, consultants, technicians, observers and any other foreign military persons, including those serving in any armed forces in Laos, and foreign civilians connected with the supply, maintenance, storing, and utilization of war materials".¹

2. SUBCATEGORIES OF PRISONERS

An examination of the various arguments used after the 1954 settlements by both sides to justify their refusal to release PW's and CI's, and of the positions taken by the ICC when confronted with these arguments, indicates just how complex the control of prisoner releases can become.

(a) "Political Internees"

Ignoring the 1954 Geneva Agreements' definition of civilian internees, the Viet Minh and Pathet Lao designated as "political internees" all civilians in their custody who had participated in the struggle—and professed to be holding very few of these. They contended that the large numbers of CI's claimed by the other side were not "internees" at all but civilians who had simply elected to remain in Communist territory. Consequently, there could be no question of releasing or surrendering them to the French/Laotian side. They further asserted that the civilian internees turned over by the French had not participated in the struggle, and therefore should never have been imprisoned or exchanged.²

That the Communists made a distinction between "political" and "civilian" internees was evident in the terms they proposed for exchanges in Laos: All "political officers" were to be exchanged in Sam Neua Province (PL territory), whereas "civilian internees" were to be handed over "in the provinces in which they were captured." The Viet Minh/Pathet Lao leaders probably wanted to make certain that they recovered their trained political cadres, whom they needed for future assignments; but they preferred to leave the average PL sympathizer in his normal place of residence, where his influence—and vote—could be most valuable in the scheduled elections.

The ICC position.—The ICC took no position on the creation of the subcategory of "political internees" except to point out that it increased the difficulty of reconciling claims and counter-claims.

(b) Releases prior to the cease-fire

After the 1954 settlement, the DRV contended that many Vietnamese prisoners claimed by the other side had, in fact, been released in North Vietnam prior to the cease-fire, and consequently did not qualify as prisoners under Article 21, which covered only those persons detained "at the coming into force" of the Agreement.³ Whether the prisoners had been released or not (and there was substantial evidence that many had not⁴), changing the status of PW's through "transformations by authority" or "voluntary transformations" would automatically result in loss of PW status, which is prohibited under Articles 5 and 7 of the 1949 Geneva Convention on Prisoners of War.⁵

¹ Laos Protocol, art. 1(a).

² Laos, *First Interim Report*, paras. 100(f) and 101(b).

³ *Ibid.*, paras. 88 (c) and (d).

⁴ Vietnam, *Fourth Interim Report*, para. 12.

⁵ See page — below.

⁶ René-Jean Wilhelm, "Can the Status of Prisoners of War Be Altered—" in *Revue Internationale de la Croix-Rouge*, July-September 1953; English text reprinted by the ICRC, Geneva, 1953. In the 1962 Laos Protocol, the earlier loophole was closed insofar as foreign prisoners were concerned: for art. 7 called for the surrender of all foreign military and civilian personnel captured or interned "during the course of hostilities."

The ICC position.—The ICC frankly conceded that it had no way of verifying the large number of releases allegedly made by the DRV in its own territory prior to the cease-fire. When the French Command reported a specific case—the detention of 141 South Vietnamese officers in PW camps in North Vietnam over a year after the release deadline—the ICC investigated the complaint and concluded that the allegations had not been proved. However, it called on the DRV to allow 80 of these officers, and their families, to choose their zone of residence, on the assumption that they apparently had been prevented from exercising this choice during the regroupment period. When the DRV rejected the recommendation, it was cited by a majority (Indian and Canadian) of the Commission for failure to cooperate with the ICC.¹ But the South Vietnamese officers and their families were nevertheless retained in North Vietnam.

(c) *Released but not surrendered*

In Vietnam, each side accused the other of releasing prisoners in violation of Article 21c by failing to surrender them to authorities of their own party. Both the DRV and the GVN either ignored the charges or contended that prisoners thus released had not wished to be surrendered.²

The ICC position.—When specific complaints were filed, the Commission ruled that failure to hand over prisoners to the other side violated the Agreement, as indeed it did. Most ICC citations based on that ruling occurred after 1954 and were directed against South Vietnam (often by an Indian-Polish majority vote). The imbalance was due to the fact that the South continued to release OI's over a period of several years, often under ICC pressure, whereas the North simply maintained that it no longer held any prisoners, despite many reliable reports to the contrary—reports that appear to have been substantiated when hundreds of African and non-French Legionnaires were repatriated as late as the 1960's.

(d) *Criminal and "Mixed Cases"*

After the deadline for the release of prisoners, the governments of Cambodia

against these prisoners.³ The ICC took the position that if a prisoner was detained for committing a criminal act during the hostilities, and that act (arson, kidnapping, or assassination) was related to the political/military conflict, then the prisoner was eligible for release under those terms of the Geneva Agreements that prohibited reprisals.

Under ICC pressure, the Cambodian Government set up a "Pardon Board" to review mixed cases, and eventually granted amnesty to 535 of the 818 prisoners so designated⁴ in South Vietnam, many were also freed by amnesty. But the GVN ignored ICC recommendations for releases in special cases, particularly when the recommendation resulted from an ICC Indian-Polish majority vote.

(e) *Military prisoners or civilian internees?*

After the deadline for prisoner releases, members of the Vietnamese National Army who had collaborated with the Viet Minh were detained by the GVN on the grounds that they were neither PW's nor OI's but violators of the GVN's military laws, and should be punished accordingly.

The ICC position.—By a majority vote (Indian-Polish), the ICC concluded that these military prisoners were, in fact, "civilian internees," who should be released under Article 21b of the Geneva Agreement. The arrest and conviction of a member of the armed forces by his own party was said not to rule out his being classified as a "civilian internee" inasmuch as any Vietnamese imprisoned for having contributed to the political and armed struggle between the two par-

¹ Vietnam, *Seventh Interim Report*, para. 32.

² There was substantial evidence that releases inside North Vietnam were fraudulent. The few VNA officers that the DRV handed over in July 1955—1 year after the cease-fire—had been forced to sign release papers showing that they had been released in 1954, before the cease-fire. They, and other PW's who occasionally escaped across the demilitarized zone, revealed the names of allegedly "released" VNA officers, the location of PW and forced-labor camps where they were detained, and the addresses of those allowed to live outside the camps but under close surveillance.

³ Any attempt to investigate similar charges against the DRV or the Pathet Lao was doomed to failure for the ICC found few prisoners accessible, and even fewer prison records available in North Vietnam, and none in the Pathet Lao controlled areas of Laos.

⁴ Cambodia, *Second Progress Report*, paras. 13-16.

ties in Vietnam was covered by Article 21b, "no matter under what law he was so convicted, and no matter what his status was at the time of arrest and conviction". Canada dissented¹ and the GVN usually ignored, or delayed implementing, ICC recommendations for the release of such military prisoners.

(f) *Escapees*

Some Vietnamese, African, and Foreign Legionnaire PW's detained by the DRV after the deadline for releases, escaped in North Vietnam in 1954-55 and sought asylum with the ICC.

The ICC position.—Although the number of PW escapees able to seek asylum with the ICC in North Vietnam was relatively small, the ICC ruled at an early date that it was "not possible or desirable" for the ICC to grant asylum.² Instead the escapees would be kept in the temporary custody of the former captors (from whom they were trying to escape), while the ICC conducted its investigation—with the understanding that the detaining authorities would make the escapees available to the Commission upon request.³

It was hardly surprising that when next the escapees appeared before the ICC, after many weeks spent at the DRV security headquarters in Hanoi, they showed signs of intense exhaustion and fear, retracted earlier charges against their captors, claimed to be deserters rather than PW's, and vowed they had changed their mind and wished to remain in North Vietnam.

(g) *"Ralliers" and deserters*

The Viet Minh contended that hundreds of European and African PW's, and thousands of Vietnamese who had fought against them, had rallied to their side and should not be turned over to the FUF Command. Rather, they should either be allowed to remain in North Vietnam, or should be repatriated by the DRV to their countries of origin—without being first turned over to the FUF Command.

Though it was generally known that some missing Vietnamese military personnel from the French Union Forces and the Vietnamese National Army had indeed rallied to the Viet Minh, the ICC

requests from the ICC and the French Command for nominal lists of all PW's claimed as "ralliers", including those who had been or were to be repatriated.

It is doubtful that the hundreds of Foreign Legionnaires repatriated through China to Communist countries in Eastern Europe during the first 2 years after the cease-fire (including the 451 whose departure was "observed" by the ICC), or the hundreds of Legionnaires and Africans released by the DRV during the ensuing 12 years, were ever genuine ralliers to the Communist side.

The ICC position.—The ICC stated that it was observing the repatriation⁴ operations to make certain that no foreign PW's would be forcibly repatriated. The Commission did not, however, cite the DRV for failing to release these men to the FUF Command as required by the Agreement, nor did it ascertain why the DRV had failed to produce the alleged foreign ralliers and deserters during the prisoner exchange period immediately after the cease-fire, a procedure that might have enabled the ICC to ascertain the prisoners' wishes at an early date.

Although in a few cases three-man ICC teams were allowed to question Legionnaires about to be repatriated, the questioning was strictly limited to two queries approved by the PAVN, it took place after the prisoners had been in North Vietnam for many months, and it was undertaken as the PW's were on the point of entering China under PAVN escort. Since the ICC had earlier

¹ Vietnam, *Sixth Interim Report*, para. 36.

² Vietnam, *First Interim Report*, para. 74.

³ Possibly the decision was taken in the knowledge that, if asylum were granted, the likely number of applicants—refugees seeking to go South, as well as PW escapees—would overwhelm the ICC's facilities in Hanoi.

⁴ The ICC made no attempt and indeed would have found it impossible, to check on the 15,000 to 20,000 Vietnamese PW's who, the DRV claimed, had rallied to its side.

⁵ In 1953, the DRV was known to have shipped Foreign Legion PW's back to their countries of origin in Central Europe, where they were tried by Communist People's courts and executed.

ruled against granting asylum, prisoners were not likely to seek it at that point when there was no where else to turn and no chance of escape.¹

In a number of cases, the DRV informed the ICC of repatriations *post factum*, but refused to provide nominal lists of the men. At other times, the repatriations were surreptitious.

(h) *Deserters—"Ralliers" seeking to return*

For months after the cease-fire, the FUF and PAVN High Command debated what should be done about deserters (again labelled "ralliers") from the French Union Forces, held by the PAVN, who had made known their wish to return to the French side.

During 1955, the PAVN turned over the FUF Command 382 "ralliers", but stipulated that it would repatriate no more through the French until the latter gave assurances that they would not punish, for desertion, any rallier handed over by the PAVN, as they had in two previous cases.²

The French refused to accept this condition, reserving the right to discipline FEC non-Vietnamese deserters under French military law, and to deal in similar fashion with Vietnamese deserters from the FEC if their motives for desertion were not established to be political.

Faced with the French refusal, the Viet Minh carried out their threat and refused to surrender 26 PW's who had succeeded in contacting the ICC, and had asked to be turned over to the French Command. Weeks later, when the ICC asked about these men, the PAVN contended that they no longer wished to be transferred, but the ICC was not allowed to interview them.

The ICC position.—The Commission repeatedly asserted that it was "not concerned under the Agreement with the problem of deserters."³ It extended its good offices to mediate between the parties, but did not issue recommendations that would have made it mandatory for the PAVN Command to produce those ralliers-deserters who had asked to return to French control, but had allegedly changed their mind; the Commission merely "suggested" that the DRV do so—a suggestion that was ignored.

In order to obtain the release of those, the DRV admitted holding, the ICC urged the French to agree not to punish returned deserters. When the French refused to heed that suggestion, the ICC said that it would take no further action "unless specific cases, where the persons concerned had been previously claimed as prisoners of war, were brought to its notice."⁴

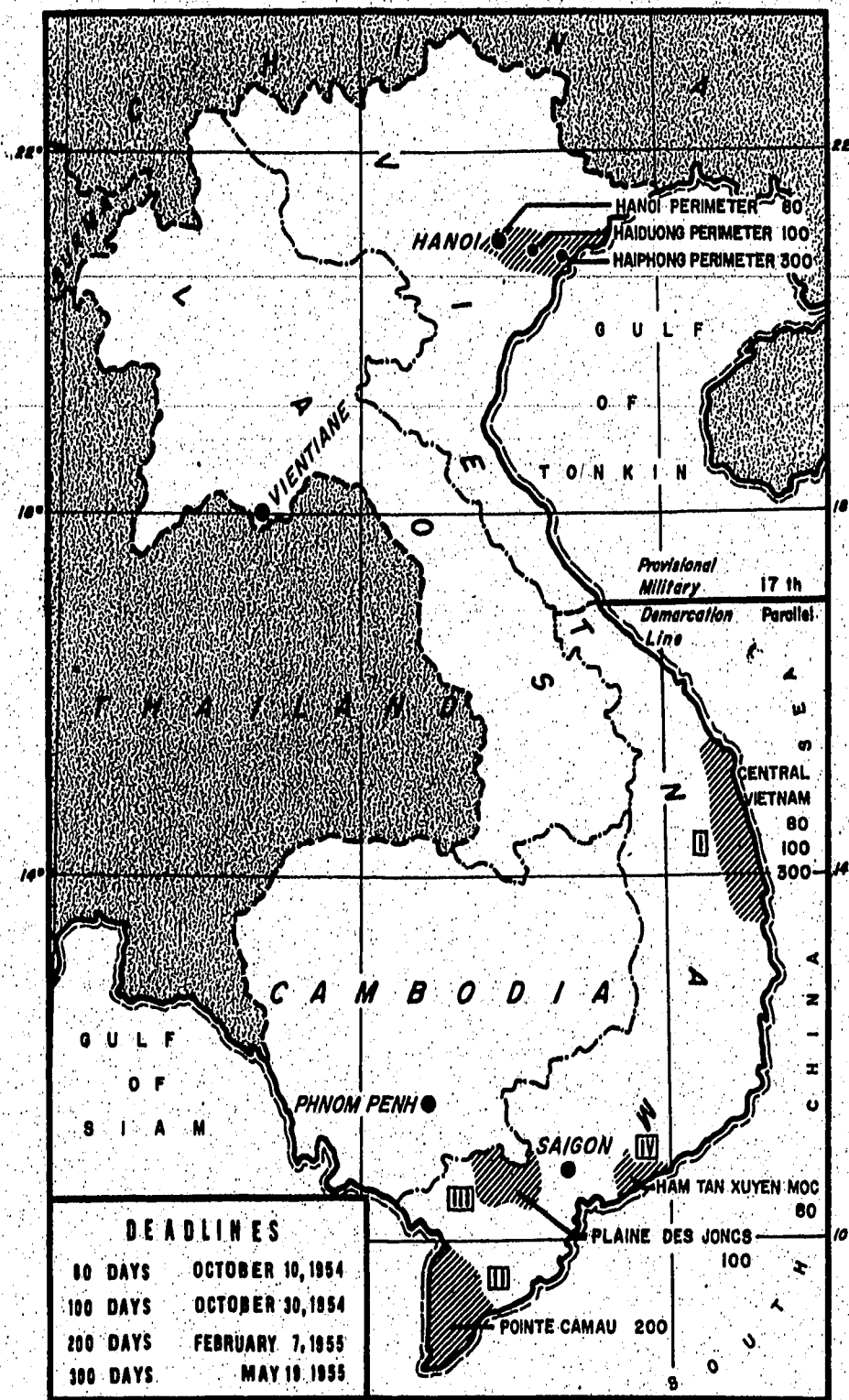
¹ The two questions asked were: "Do you consider yourself a prisoner of war?" and "Are you being repatriated of your own free will?" Despite the fact that the ICC team was unable to obtain the names of the "ralliers" (the PAVN Command claimed that the men did not come under the Geneva Agreements), it professed to be satisfied "that the persons concerned did not claim to be prisoners of war and that they were being repatriated of their free will." Vietnam, *Sixth Interim Report*, para. 30.

² Vietnam, *Sixth Interim Report*, paras. 31 and 32 and *Seventh Interim Report*, paras. 34 and 35.

³ Vietnam, *Fourth Interim Report*, para. 8.

⁴ Vietnam, *Seventh Interim Report*, para. 34. The Geneva PW Convention does not deal with deserters, but neither does it permit a change in the status of PW's "from the time they fall into power of the enemy until their final release and repatriation." Thus, a combatant who wanted to be treated as a deserter would have to declare himself such at the time he joined the enemy, but would not be able to do so after months or years of captivity. As alleged deserters held by the North Vietnamese were not interviewed by the ICC (except for those who sought asylum with the ICC) there was no way of determining whether the men were, in fact, deserters and, if so, whether they had so stated upon coming under control of the PAVN.

VIETNAM: PROVISIONAL ASSEMBLY AREAS



THE VIETNAM AGREEMENT AND PROTOCOLS, SIGNED JANUARY 27, 1973¹
 AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM

The Parties participating in the Paris Conference on Vietnam, With a view to ending the war and restoring peace in Vietnam on the basis of respect for the Vietnamese people's fundamental national rights and the South Vietnamese people's right to self-determination, and to contributing to the consolidation of peace in Asia and the world,
 Have agreed on the following provisions and undertake to respect and to implement them:

Chapter I

THE VIETNAMESE PEOPLE'S FUNDAMENTAL NATIONAL RIGHTS

Article 1

The United States and all other countries respect the independence, sovereignty, unity, and territorial integrity of Vietnam as recognized by the 1954 Geneva Agreements on Vietnam.

Chapter II

CESSATION OF HOSTILITIES—WITHDRAWAL OF TROOPS

Article 2

A cease-fire shall be observed throughout South Vietnam as of 2400 hours G.M.T., on January 27, 1973.

At the same hour, the United States will stop all its military activities against the territory of the Democratic Republic of Vietnam by ground, air and naval forces, wherever they may be based, and end the mining of the territorial waters, ports, harbors, and waterways of the Democratic Republic of Vietnam. The United States will remove, permanently deactivate or destroy all the mines in the territorial waters, ports, harbors, and waterways of North Vietnam as soon as this Agreement goes into effect.

The complete cessation of hostilities mentioned in this Article shall be durable and without limit of time.

Article 3

The parties undertake to maintain the cease-fire and to ensure a lasting and stable peace.

As soon as the cease-fire goes into effect:

(a) The United States forces and those of the other foreign countries allied with the United States and the Republic of Vietnam shall remain in place pending the implementation of the plan of troop withdrawal. The Four-Party Joint Military Commission described in Article 10 shall determine the modalities.

(b) The armed forces of the two South Vietnamese parties shall remain in place. The Two-Party Joint Military Commission described in Article 17 shall determine the areas controlled by each party and the modalities of stationing.

(c) The regular forces of all services and arms and the irregular forces of the parties in South Vietnam shall stop all offensive activities against each other and shall strictly abide by the following stipulations:

All acts of force on the ground, in the air, and on the sea shall be prohibited; All hostile acts, terrorism and reprisals by both sides will be banned.

Article 4

The United States will not continue its military involvement or intervene in the internal affairs of South Vietnam.

Article 5

Within sixty days of the signing of this Agreement, there will be a total withdrawal from South Vietnam of troops, military advisers, and military personnel, including technical military personnel and military personnel associated with the pacification program, armaments, munitions, and war material of the United States and those of the other foreign countries mentioned in Article 3 (a). Advisers from the above-mentioned countries to all paramilitary organizations and the police force will also be withdrawn within the same period of time.

Article 6

The dismantlement of all military bases in South Vietnam of the United States and of the other foreign countries mentioned in Article 3 (a) shall be completed within sixty days of the signing of this Agreement.

¹ Weekly Compilation of Presidential Documents, Jan. 29, 1973, pp. 45-64.

Article 7

From the enforcement of the cease-fire to the formation of the government provided for in Articles 9 (b) and 14 of this Agreement, the two South Vietnamese parties shall not accept the introduction of troops, military advisers, and military personnel including technical military personnel, armaments, munitions, and war material into South Vietnam.

The two South Vietnamese parties shall be permitted to make periodic replacement of armaments, munitions and war material which have been destroyed, damaged, worn out or used up after the cease-fire, on the basis of piece-for-piece, of the same characteristics and properties, under the supervision of the Joint Military Commission of the two South Vietnamese parties and of the International Commission of Control and Supervision.

Chapter III

THE RETURN OF CAPTURED MILITARY PERSONNEL AND FOREIGN CIVILIANS, AND CAPTURED AND DETAINED VIETNAMESE CIVILIAN PERSONNEL

Article 8

(a) The return of captured military personnel and foreign civilians of the parties shall be carried out simultaneously with and completed not later than the same day as the troop withdrawal mentioned in Article 5. The parties shall exchange complete lists of the above-mentioned captured military personnel and foreign civilians on the day of the signing of this Agreement.

(b) The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take any such other measures as may be required to get information about those still considered missing in action.

(c) The question of the return of Vietnamese civilian personnel captured and detained in South Vietnam will be resolved by the two South Vietnamese parties on the basis of the principles of Article 21 (b) of the Agreement on the Cessation of Hostilities in Vietnam of July 20, 1954. The two South Vietnamese parties will do so in a spirit of national reconciliation and concord, with a view to ending hatred and enmity, in order to ease suffering and to reunite families. The two South Vietnamese parties will do their utmost to resolve this question within ninety days after the cease-fire comes into effect.

Chapter IV

THE EXERCISE OF THE SOUTH VIETNAMESE PEOPLE'S RIGHT TO SELF-DETERMINATION

Article 9

The Government of the United States of America and the Government of the Democratic Republic of Vietnam undertake to respect the following principles for the exercise of the South Vietnamese people's right to self-determination:

(a) The South Vietnamese people's right to self-determination is sacred, inalienable, and shall be respected by all countries.

(b) The South Vietnamese people shall decide themselves the political future of South Vietnam through genuinely free and democratic general elections under international supervision.

(c) Foreign countries shall not impose any political tendency or personality on the South Vietnamese people.

Article 10

The two South Vietnamese parties undertake to respect the cease-fire and maintain peace in South Vietnam, settle all matters of contention through negotiations, and avoid all armed conflict.

Article 11

Immediately after the cease-fire, the two South Vietnamese parties will:

Achieve national reconciliation and concord, end hatred and enmity, prohibit all acts of reprisal and discrimination against individuals or organizations that have collaborated with one side or the other;

Ensure the democratic liberties of the people: personal freedom, freedom of speech, freedom of the press, freedom of meeting, freedom of organization, freedom of political activities, freedom of belief, freedom of movement, freedom of residence, freedom of work, right to property ownership, and right to free enterprise.

Article 12

(a) Immediately after the cease-fire, the two South Vietnamese parties shall hold consultations in a spirit of national reconciliation and concord, mutual respect; and mutual non-elimination to set up a National Council of National Reconciliation and Concord of three equal segments. The Council shall operate

on the principle of unanimity. After the National Council of National Reconciliation and Concord has assumed its functions, the two South Vietnamese parties will consult about the formation of councils at lower levels. The two South Vietnamese parties shall sign an agreement on the internal matters of South Vietnam as soon as possible and do their utmost to accomplish this within ninety days after the cease-fire comes into effect, in keeping with the South Vietnamese people's aspirations for peace, independence and democracy.

(b) The National Council of National Reconciliation and Concord shall have the task of promoting the two South Vietnamese parties' implementation of this Agreement, achievement of national reconciliation and concord and ensurance of democratic liberties. The National Council of National Reconciliation and Concord will organize the free and democratic general elections provided for in Article 9 (b) and decide the procedures and modalities of these general elections. The institutions for which the general elections are to be held will be agreed upon through consultations between the two South Vietnamese parties. The National Council of National Reconciliation and Concord will also decide the procedures and modalities of such local elections as the two South Vietnamese parties agree upon.

Article 13

The question of Vietnamese armed forces in South Vietnam shall be settled by the two South Vietnamese parties in a spirit of national reconciliation and concord, equality and mutual respect, without foreign interference, in accordance with the postwar situation. Among the questions to be discussed by the two South Vietnamese parties are steps to reduce their military effectives and to demobilize the troops being reduced. The two South Vietnamese parties will accomplish this as soon as possible.

Article 14

South Vietnam will pursue a foreign policy of peace and independence. It will be prepared to establish relations with all countries irrespective of their political and social systems on the basis of mutual respect for independence and sovereignty and accept economic and technical aid from any country with no political conditions attached. The acceptance of military aid by South Vietnam in the future shall come under the authority of the government set up after the general elections in South Vietnam provided for in Article 9 (b).

Chapter V

THE REUNIFICATION OF VIETNAM AND THE RELATIONSHIP BETWEEN NORTH AND SOUTH VIETNAM

Article 15

The reunification of Vietnam shall be carried out step by step through peaceful means on the basis of discussions and agreements between North and South Vietnam, without coercion or annexation by either party, and without foreign interference. The time for reunification will be agreed upon by North and South Vietnam.

Pending reunification:

(a) The military demarcation line between the two zones at the 17th parallel is only provisional and not a political or territorial boundary, as provided for in paragraph 6 of the Final Declaration of the 1954 Geneva Conference.

(b) North and South Vietnam shall respect the Demilitarized Zone on either side of the Provisional Military Demarcation Line.

(c) North and South Vietnam shall promptly start negotiations with a view to reestablishing normal relations in various fields. Among the questions to be negotiated are the modalities of civilian movement across the Provisional Military Demarcation Line.

(d) North and South Vietnam shall not join any military alliance or military bloc and shall not allow foreign powers to maintain military bases, troops, military advisors, and military personnel on their respective territories, as stipulated in the 1954 Geneva Agreements on Vietnam.

Chapter VI

THE JOINT MILITARY COMMISSIONS, THE INTERNATIONAL COMMISSION OF CONTROL AND SUPERVISION, THE INTERNATIONAL CONFERENCE

Article 16

(a) The Parties participating in the Paris Conference on Vietnam shall immediately designate representatives to form a Four-Party Joint Military Commission with the task of ensuring joint action by the parties in implementing the following provisions of this Agreement:

The first paragraph of Article 2, regarding the enforcement of the cease-fire throughout South Vietnam;

Article 3 (a), regarding the cease-fire by U.S. forces and those of the other foreign countries referred to in that Article;

Article 3 (c), regarding the cease-fire between all parties in South Vietnam;

Article 5, regarding the withdrawal from South Vietnam of U.S. troops and those of the other foreign countries mentioned in Article 8 (a);

Article 6, regarding the dismantlement of military bases in South Vietnam of the United States and those of the other foreign countries mentioned in Article 8 (a);

Article 8 (a), regarding the return of captured military personnel and foreign civilians of the parties;

Article 8 (b), regarding the mutual assistance of the parties in getting information about those military personnel and foreign civilians of the parties missing in action.

(b) The Four-Party Joint Military Commission shall operate in accordance with the principle of consultations and unanimity. Disagreements shall be referred to the International Commission of Control and Supervision.

(c) The Four-Party Joint Military Commission shall begin operating immediately after the signing of this Agreement and end its activities in sixty days, after the completion of the withdrawal of U.S. troops and those of the other foreign countries mentioned in Article 8 (a) and the completion of the return of captured military personnel and foreign civilians of the parties.

(d) The four parties shall agree immediately on the organization, the working procedure, means of activity, and expenditures of the Four-Party Joint Military Commission.

Article 17

(a) The two South Vietnamese parties shall immediately designate representatives to form a Two-Party Joint Military Commission with the task of ensuring joint action by the two South Vietnamese parties in implementing the following provisions of this Agreement:

The first paragraph of Article 2, regarding the enforcement of the cease-fire throughout South Vietnam, when the Four-Party Joint Military Commission has ended its activities;

Article 8 (b), regarding the cease-fire between the two South Vietnamese parties;

Article 8 (c), regarding the cease-fire between all parties in South Vietnam, when the Four-Party Joint Military Commission has ended its activities;

Article 7, regarding the prohibition of the introduction of troops into South Vietnam and all other provisions of this article;

Article 8 (c), regarding the question of the return of Vietnamese civilian personnel captured and detained in South Vietnam;

Article 13, regarding the reduction of the military effectives of the two South Vietnamese parties and the demobilization of the troops being reduced.

(b) Disagreements shall be referred to the International Commission of Control and Supervision.

(c) After the signing of this Agreement, the Two-Party Joint Military Commission shall agree immediately on the measures and organization aimed at enforcing the cease-fire and preserving peace in South Vietnam.

Article 18

(a) After the signing of this Agreement, an International Commission of Control and Supervision shall be established immediately.

(b) Until the International Conference provided for in Article 19 makes definitive arrangements, the International Commission of Control and Supervision will report to the four parties of matters concerning the control and supervision of the implementation of the following provisions of this Agreement:

The first paragraph of Article 2, regarding the enforcement of the cease-fire throughout South Vietnam;

Article 3 (a), regarding the cease-fire by U.S. forces and those of other foreign countries referred to in that Article;

Article 3 (c), regarding the cease-fire between all the parties in South Vietnam;

Article 5, regarding the withdrawal from Vietnam of U.S. troops and those of the other foreign countries mentioned in Article 8 (a);

Article 6, regarding the dismantlement of military bases in South Vietnam of the United States and those of the other foreign countries mentioned in Article 8 (a);

Article 8 (a), regarding the return of captured military personnel and foreign civilians of the parties.

The International Commission of Control and Supervision shall form control teams for carrying out its task. The four parties shall agree immediately on the location and operation of these teams. The parties will facilitate their operation.

(c) Until the International Conference makes definitive arrangements, the International Commission of Control and Supervision will report to the two South Vietnamese parties on matters concerning the control and supervision of the implementation of the following provisions of this Agreement:

The first paragraph of Article 2, regarding the enforcement of the cease-fire throughout South Vietnam, when the Four-Party Joint Military Commission has ended its activities;

Article 8(b), regarding the cease-fire between the two South Vietnamese parties;

Article 8(c), regarding the cease-fire between all parties in South Vietnam, when the Four-Party Joint Military Commission has ended its activities;

Article 7, regarding the prohibition of the introduction of troops into South Vietnam and all other provisions of this Article;

Article 8(c), regarding the question of the return of Vietnamese civilian personnel captured and detained in South Vietnam;

Article 9(b), regarding the free and democratic general elections in South Vietnam;

Article 13, regarding the reduction of the military effectives of the two South Vietnamese parties and the demobilization of the troops being reduced.

The International Commission of Control and Supervision shall form control teams for carrying out its tasks. The two South Vietnamese parties shall agree immediately on the location and operation of these teams. The two South Vietnamese parties will facilitate their operation.

(d) The International Commission of Control and Supervision shall be composed of representatives of four countries: Canada, Hungary, Indonesia and Poland. The chairmanship of this Commission will rotate among the members for specific periods to be determined by the Commission.

(e) The International Commission of Control and Supervision shall carry out its tasks in accordance with the principle of respect for the sovereignty of South Vietnam.

(f) The International Commission of Control and Supervision shall operate in accordance with the principle of consultations and unanimity.

(g) The International Commission of Control and Supervision shall begin operating when a cease-fire comes into force in Vietnam. As regards the provisions in Article 18(b) concerning the four parties, the International Commission of Control and Supervision shall end its activities when the Commission's tasks of control and supervision regarding these provisions have been fulfilled. As regards the provisions in Article 18(c) concerning the two South Vietnamese parties, the International Commission of Control and Supervision shall end its activities on the request of the government formed after the general elections in South Vietnam provided for in Article 9(b).

(h) The four parties shall agree immediately on the organization, means of activity, and expenditures of the International Commission of Control and Supervision. The relationship between the International Commission and the International Conference will be agreed upon by the International Commission and the International Conference.

The parties agree on the convening of an International Conference within thirty days of the signing of this Agreement to acknowledge the signed agreements; to guarantee the ending of the war, the maintenance of peace in Vietnam, the respect of the Vietnamese people's fundamental national rights, and the South Vietnamese people's rights to self-determination; and to contribute to and guarantee peace in Indochina.

The United States and the Democratic Republic of Vietnam, on behalf of the parties participating in the Paris Conference on Vietnam, will propose to the following parties that they participate in this International Conference: the People's Republic of China, the Republic of France, the Union of Soviet Socialist Republics, the United Kingdom, the four countries of the International Commission of Control and Supervision, and the Secretary General of the United Nations, together with the parties participating in the Paris Conference on Vietnam.

Chapter VII

REGARDING CAMBODIA AND LAOS

Article 20

(a) The parties participating in the Paris Conference on Vietnam shall strictly respect the 1954 Geneva Agreement on Cambodia and the 1962 Geneva Agreements on Laos, which recognized the Cambodian and the Lao peoples' fundamental national rights, i.e., the independence, sovereignty, unity, and territorial integrity of these countries. The parties shall respect the neutrality of Cambodia and Laos.

The parties participating in the Paris Conference on Vietnam undertake to refrain from using the territory of Cambodia and the territory of Laos to encroach on the sovereignty and security of one another and of other countries.

(b) Foreign countries shall put an end to, all military activities in Cambodia and Laos, totally withdraw from and refrain from reintroducing into these two countries troops, military advisers and military personnel, armaments, munitions and war material.

(c) The internal affairs of Cambodia and Laos shall be settled by the people of each of these countries without foreign interference.

(d) The problems existing between the Indochinese countries shall be settled by the Indochinese parties on the basis of respect for each other's independence, sovereignty, and territorial integrity, and non-interference in each other's internal affairs.

Chapter VIII

THE RELATIONSHIP BETWEEN THE UNITED STATES AND THE DEMOCRATIC REPUBLIC OF VIETNAM

Article 21

The United States anticipates that this Agreement will usher in an era of reconciliation with the Democratic Republic of Vietnam as with all the peoples of Indochina. In pursuance of its traditional policy, the United States will contribute to healing the wounds of war and to postwar reconstruction of the Democratic Republic of Vietnam and throughout Indochina.

Article 22

The ending of the war, the restoration of peace in Vietnam, and the strict implementation of this Agreement will create conditions for establishing a new, equal and mutually beneficial relationship between the United States and the Democratic Republic of Vietnam on the basis of respect for each other's independence and sovereignty, and non-interference in each other's internal affairs. At the same time this will ensure stable peace in Vietnam and contribute to the preservation of lasting peace in Indochina and Southeast Asia.

Chapter IX

OTHER PROVISIONS

Article 23

This Agreement shall enter into force upon signature by plenipotentiary representatives of the parties participating in the Paris Conference on Vietnam. All the parties concerned shall strictly implement this Agreement and its Protocols, Done in Paris this twenty-seventh day of January, One Thousand-Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

[Separate Numbered Page]

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Republic of Vietnam:

TRAN VAN LAM,
Minister for Foreign Affairs.

[Separate Numbered Page]

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

For the Provisional Revolutionary Government of the Republic of South Vietnam:

NGUYEN THI BINH,
Minister for Foreign Affairs.

AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM

The Government of the United States of America, with the concurrence of the Government of the Republic of Vietnam,

The Government of the Democratic Republic of Vietnam, with the concurrence of the Provisional Revolutionary Government of the Republic of South Vietnam,

With a view to ending the war and restoring peace in Vietnam on the basis of respect for the Vietnamese people's fundamental national rights and the South Vietnamese people's right to self-determination, and to contributing to the consolidation of peace in Asia and the world,

Have agreed on the following provisions and undertake to respect and to implement them:

[Text of Agreement Chapters I-VIII Same As Above]

Chapter IX
OTHER PROVISIONS

Article 23

The Paris Agreement on Ending the War and Restoring Peace in Vietnam shall enter into force upon signature of this document by the Secretary of State of the Government of the United States of America and the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and upon signature of a document in the same terms by the Secretary of State of the Government of the United States of America, the Minister for Foreign Affairs of the Government of the Republic of Vietnam, the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and the Minister for Foreign Affairs of the Provisional Revolutionary Government of the Republic of South Vietnam. The Agreement and the protocols to it shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY THUAN,
Minister for Foreign Affairs.

Protocol on Prisoners and Detainees
(White House press release dated January 24)

PROTOCOL TO THE AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM CONCERNING THE RETURN OF CAPTURED MILITARY PERSONNEL AND FOREIGN CIVILIANS AND CAPTURED AND DETAINED VIETNAMESE CIVILIAN PERSONNEL

The Parties participating in the Paris Conference on Vietnam.

In implementation of Article 8 of the Agreement on Ending the War and Restoring Peace in Vietnam signed on this date providing for the return of captured military personnel and foreign civilians, and captured and detained Vietnamese civilian personnel,

Have agreed as follows:

THE RETURN OF CAPTURED MILITARY PERSONNEL AND FOREIGN CIVILIANS

Article 1

The parties signatory to the Agreement shall return the captured military personnel of the parties mentioned in Article 8(a) of the Agreement as follows:

All captured military personnel of the United States and those of the other foreign countries mentioned in Article 8(a) of the Agreement shall be returned to United States authorities;

All captured Vietnamese military personnel, whether belonging to regular or irregular armed forces, shall be returned to the two South Vietnamese parties; they shall be returned to that South Vietnamese party under whose command they served.

Article 2

All captured civilians who are nationals of the United States or of any other foreign countries mentioned in Article 8(a) of the Agreement shall be returned to United States authorities. All other captured foreign civilians shall be returned to the authorities of their country of nationality by any one of the parties willing and able to do so.

Article 3

The parties shall today exchange complete lists of captured persons mentioned in Articles 1 and 2 of this Protocol.

Article 4

(a) The return of all captured persons mentioned in Articles 1 and 2 of this Protocol shall be completed within sixty days of the signing of the Agreement at a rate no slower than the rate of withdrawal from South Vietnam of United States forces and those of the other foreign countries mentioned in Article 8 of the Agreement.

(b) Persons who are seriously ill, wounded or maimed, old persons and women shall be returned first. The remainder shall be returned either by returning all from one detention place after another or in order of their dates of capture, beginning with those who have been held the longest.

Article 5

The return and reception of the persons mentioned in Articles 1 and 2 of this Protocol shall be carried out at places convenient to the concerned parties. Places of return shall be agreed upon by the Four-Party Joint Military Commission. The parties shall ensure the safety of personnel engaged in the return and reception of those persons.

Article 6

Each party shall return all captured persons mentioned in Articles 1 and 2 of this Protocol without delay and shall facilitate their return and reception. The detaining parties shall not deny or delay their return for any reason, including the fact that captured persons may, on any grounds, have been prosecuted or sentenced.

THE RETURN OF CAPTURED AND DETAINED VIETNAMESE CIVILIAN PERSONNEL

Article 7

(a) The question of the return of Vietnamese civilian personnel captured and detained in South Vietnam will be resolved by the two South Vietnamese parties on the basis of the principles of Article 21 (b) of the Agreement on the Cessation of Hostilities in Vietnam of July 20, 1954, which reads as follows:
"The term 'civilian internees' is understood to mean all persons who, having in any way contributed to the political and armed struggle between the two parties, have been arrested for that reason and have been kept in detention by either party during the period of hostilities."

(b) The two South Vietnamese parties will do so in a spirit of national reconciliation and concord with a view to ending hatred and enmity in order to ease suffering and to reunite families. The two South Vietnamese parties will do their utmost to resolve this question within ninety days after the cease-fire comes into effect.

(c) Within fifteen days after the cease-fire comes into effect, the two South Vietnamese parties shall exchange lists of the Vietnamese civilian personnel captured and detained by each party and lists of the places at which they are held.

TREATMENT OF CAPTURED PERSONS DURING DETENTION

Article 8

(a) All captured military personnel of the parties and captured foreign civilians of the parties shall be treated humanely at all times, and in accordance with international practice.

They shall be protected against all violence to life and person, in particular against murder in any form, mutilation, torture and cruel treatment, and outrages upon personal dignity. These persons shall not be forced to join the armed forces of the detaining party.

They shall be given adequate food, clothing, shelter, and the medical attention required for their state of health. They shall be allowed to exchange post cards and letters with their families and receive parcels.

(b) All Vietnamese civilian personnel captured and detained in South Vietnam shall be treated humanely at all times, and in accordance with international practice.

They shall be protected against all violence to life and person, in particular against murder in any form, mutilation, torture and cruel treatment, and outrages against personal dignity. The detaining parties shall not deny or delay their return for any reason, including the fact that captured persons may, on any grounds, have been prosecuted or sentenced. These persons shall not be forced to join the armed forces of the detaining party.

They shall be given adequate food, clothing, shelter, and the medical attention required for their state of health. They shall be allowed to exchange post cards and letters with their families and receive parcels.

Article 9

(a) To contribute to improving the living conditions of the captured military personnel of the parties and foreign civilians of the parties, the parties shall, within fifteen days after the cease-fire comes into effect, agree upon the designation of two or more national Red Cross societies to visit all places where captured military personnel and foreign civilians are held.

(b) To contribute to improving the living conditions of the captured and detained Vietnamese civilian personnel, the two South Vietnamese parties shall, within fifteen days after the cease-fire comes into effect, agree upon the designation of two or more national Red Cross societies to visit all places where the captured and detained Vietnamese civilian personnel are held.

WITH REGARD TO DEAD AND MISSING PERSONS

Article 10

(a) The Four-Party Joint Military Commission shall ensure joint action by the parties in implementing Article 8 (b) of the Agreement. When the Four-Party Joint Military Commission has ended its activities, a Four-Party Joint Military team shall be maintained to carry on this task.

(b) With regard to Vietnamese civilian personnel dead or missing in South Vietnam, the two South Vietnamese parties shall help each other to obtain information about missing persons, determine the location and take care of the graves of the dead, in a spirit of national reconciliation and concord, in keeping with the people's aspirations.

OTHER PROVISIONS

Article 11

(a) The Four-Party and Two-Party Joint Military Commissions will have the responsibility of determining immediately the modalities of implementing the provisions of this Protocol consistent with their respective responsibilities under Articles 10 (a) and 17 (a) of the Agreement. In case the Joint Military Commissions, when carrying out their tasks, cannot reach agreement on a matter pertaining to the return of captured personnel they shall refer to the International Commission for its assistance.

(b) The Four-Party Joint Military Commission shall form, in addition to the teams established by the Protocol concerning the cease-fire in South Vietnam and the Joint Military Commissions, a subcommission on captured persons and, as required, joint military teams on captured persons to assist the Commission in its tasks.

(c) From the time the cease-fire comes into force to the time when the Two-Party Joint Military Commission becomes operational, the two South Vietnamese parties' delegations to the Four-Party Joint Military Commission shall form a provisional sub-commission and provisional joint military teams to carry out its tasks concerning captured and detained Vietnamese civilian personnel.

(d) The Four-Party Joint Military Commission shall send joint military teams to observe the return of the persons mentioned in Articles 1 and 2 of this Protocol at each place in Vietnam where such persons are being returned, and at the last detention places from which these persons will be taken to the places of return. The Two-Party Joint Military Commission shall send joint military teams to observe the return of Vietnamese civilian personnel captured and detained at each place in South Vietnam where such persons are being returned, and at the last detention places from which these persons will be taken to the places of return.

Article 12

In implementation of Articles 18 (b) and 18 (c) of the Agreement, the International Commission of Control and Supervision shall have the responsibility to control and supervise the observance of Articles 1 through 7 of this Protocol through observation of the return of captured military personnel, foreign civilians and captured and detained Vietnamese civilian personnel at each place in Vietnam where these persons are being returned, and at the last detention places from which these persons will be taken to the places of return, the examination of lists, and the investigation of violations of the provisions of the above-mentioned Articles.

Article 13

Within five days after signature of this Protocol, each party shall publish the text of the Protocol and communicate it to all the captured persons covered by the Protocol and being detained by that party.

Article 14

This Protocol shall come into force upon signature by plenipotentiary representatives of all the parties participating in the Paris Conference on Vietnam. It shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

[Separate Numbered Page]

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Republic of Vietnam:

TRAN VAN LAM,
Minister for Foreign Affairs.

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

For the Provisional Revolutionary Government of the Republic of South Vietnam:

NGUYEN THI BINH,
Minister for Foreign Affairs.

PROTOCOL TO THE AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM CONCERNING THE RETURN OF CAPTURED MILITARY PERSONNEL AND FOREIGN CIVILIANS AND CAPTURED AND DETAINED VIETNAMESE CIVILIAN PERSONNEL

The Government of the United States of America, with the concurrence of the Government of the Republic of Vietnam,
The Government of the Democratic Republic of Vietnam, with the concurrence of the Provisional Revolutionary Government of the Republic of South Vietnam,
In implementation of Article 8 of the Agreement on Ending the War and Restoring Peace in Vietnam signed on this date providing for the return of captured military personnel and foreign civilians, and captured and detained Vietnamese civilian personnel,

Have agreed as follows:

[Text of Protocol Articles 1-13 same as above]

Article 14

The Protocol to the Paris Agreement on Ending the War and Restoring Peace in Vietnam concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel shall enter into force upon signature of this document by the Secretary of State of the Government of the United States of America and the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and upon signature of a document in the same terms by the Secretary of State of the Government of the United States of America, the Minister for Foreign Affairs of the Government of the Republic of Vietnam, the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and the Minister for Foreign Affairs of the Provisional Revolutionary Government of the Republic of South Vietnam. The Protocol shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Democratic Republic of Vietnam:

TRAN VAN LAM,
Minister for Foreign Affairs.

Protocol on the International Commission of Control and Supervision

[White House press release dated January 24]

PROTOCOL TO THE AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM CONCERNING THE INTERNATIONAL COMMISSION OF CONTROL AND SUPERVISION

The parties participating in the Paris Conference on Vietnam,
In implementation of Article 18 of the Agreement signed on this date providing for the formulation of the International Commission of Control and Supervision,
Have agreed as follows:

Article 1

The implementation of the Agreement is the responsibility of the parties signatory to the Agreement.

The functions of the International Commission are to control and supervise the implementation of the provisions mentioned in Article 18 of the Agreement. In carrying out these functions, the International Commission shall:

(a) Follow the implementation of the above-mentioned provisions of the Agreement through communication with the parties and on-the-spot observation at the places where this is required;

(c) When necessary, cooperate with the Joint Military Commissions in determining and detecting violations of the above-mentioned provisions.

Article 2

The International Commission shall investigate violations of the provisions described on Article 18 of the Agreement on the request of the Four-Party Joint Military Commission, or of the Two-Party Joint Military Commission, or of any party, or, with respect to Article 9(b) of the Agreement on general elections, of the National Council on National Reconciliation and Concord, or in any case where the International Commission has other adequate grounds for considering that there has been a violation of those provisions. It is understood that, in carrying out this task, the International Commission shall function with the concerned parties' assistance and cooperation as required.

Article 3

(a) When the International Commission finds that there is a serious violation in the implementation of the Agreement or a threat to peace against which the Commission can find no appropriate measure, the Commission shall report this to the four parties to the Agreement so that they can hold consultations to find a solution.

(b) In accordance with Article 18 (f) of the Agreement, the International Commission's reports shall be made with the unanimous agreement of the representatives of all the four members. In case no unanimity is reached, the Commission shall forward the different views to the four parties in accordance with Article 18 (h) of the Agreement, or to the two South Vietnamese parties in accordance with Article 18 (c) of the Agreement, but these shall not be considered as reports of the Commission.

Article 4

(a) The headquarters of the International Commission shall be at Saigon.

(b) There shall be seven regional teams located in the regions shown on the annexed map* and based at the following places:

Region I, Hue; Region II, Da Nang; Region III, Pleiku; Region IV, Phan Thiet; Region V, Bien Hoa; Region VI, My Tho; and Region VII, Can Tho.

The International Commission shall designate three teams for the region of Saigon-Gia Dinh.

*See map on p. 530.

(c) There shall be twenty-six teams operating in the areas shown on the annexed map and based at the following places in South Vietnam:

Region I. Quang Tri, Phu Bai.

Region II. Ba An, Tam Ky, Chu Lai.

Region III. Kontum, Hau Bon, Phu Cat, Tuy An, Ninh Hoa, Ban Me Thuot.

Region IV. Da Lat, Bao Loc, Phan Rang.

Region V. An Loc, Xuan Loc, Ben Cat, Cu Chi, Tan An.

Region VI. Moc Hoa, Giong Tron.

Region VII. Tri Ton, Vinh Long, Vi Thanh, Khanh Hung, Quan Long.

(d) There shall be twelve teams located as shown on the annexed map and based at the following places: Gio Linh (to cover the area south of the Provisional Military Demarcation Line), Lao Bao, Ben Het, Duc Co, Chu Lai, Qui Nhon, Nha Trang, Vung Tau, Xa Mat, Bien Hoa Airfield, Hong Ngu, and Can Tho.

(e) There shall be seven teams, six of which shall be available for assignment to the points of entry which are not listed in paragraph (d) above and which the two South Vietnamese parties choose as points for legitimate entry to South Vietnam for replacement of armaments, munitions, and war material permitted by Article 7 of the Agreement. Any team or teams not needed for the above-mentioned assignment shall be available for other tasks, in keeping with the Commission's responsibility for control and supervision.

(f) There shall be seven teams to control and supervise the return of captured and detained personnel of the parties.

Article 5

(a) To carry out its tasks concerning the return of the captured military personnel and foreign civilians of the parties as stipulated by Article 8(a) of the Agreement, the International Commission shall, during the time of such return, send one control and supervision team to each place in Vietnam where the captured persons are being returned, and to the last detention places from which these persons will be taken to the places of return.

(b) To carry out its tasks concerning the return of the Vietnamese civilian personnel captured and detained in South Vietnam mentioned in Article 8(c) of the Agreement, the International Commission shall, during the time of such return, send one control and supervision team to each place in South Vietnam where the above-mentioned captured and detained persons are being returned, and to the last detention places from which these persons shall be taken to the places of return.

Article 6

To carry out its tasks regarding Article 9(b) of the Agreement on the free and democratic general elections in South Vietnam, the International Commission shall organize additional teams, when necessary. The International Commission shall discuss this question in advance with the National Council of National Reconciliation and Concord. If additional teams are necessary for this purpose, they shall be formed thirty days before the general elections.

Article 7

The International Commission shall continually keep under review its size, and shall reduce the number of its teams, its representatives or other personnel, or both, when those teams, representatives or personnel have accomplished the tasks assigned to them and are not required for other tasks. At the same time, the expenditures of the International Commission shall be reduced correspondingly.

Article 8

Each member of the International Commission shall make available at all times the following numbers of qualified personnel:

(a) One senior representative and twenty-six others for the headquarters staff.

(b) Five for each of the seven regional teams.

(c) Two for each of the other international control teams, except for the teams at Gio Linh and Vung Tau, each of which shall have three.

(d) One hundred sixteen for the purpose of providing support to the Commission Headquarters and its teams.

Article 9

(a) The International Commission, and each of its teams, shall act as a single body comprising representatives of all four members.

(b) Each member has the responsibility to ensure the presence of its representatives at all levels of the International Commission. In case a representative is absent, the member concerned shall immediately designate a replacement.

Article 10

(a) The parties shall afford full cooperation, assistance, and protection to the International Commission.

(b) The parties shall at all times maintain regular and continuous liaison with the International Commission. During the existence of the Four-Party Joint Military Commission, the delegations of the parties to that Commission shall also perform liaison functions with the International Commission. After the Four-Party Joint Military Commission has ended its activities, such liaison shall be maintained through the Two-Party Joint Military Commission, liaison missions, or other adequate means.

(c) The International Commission and the Joint Military Commissions shall closely cooperate with and assist each other in carrying out their respective functions.

(d) Wherever a team is stationed or operating, the concerned party shall designate a liaison officer to the team to cooperate with and assist it in carrying out without hindrance its task of control and supervision. When a team is carrying out an investigation, a liaison officer from each concerned party shall have the opportunity to accompany it, provided the investigation is not thereby delayed.

(e) Each party shall give the International Commission reasonable advance notice of all proposed actions concerning those provisions of the Agreement that are to be controlled and supervised by the International Commission.

(f) The International Commission, including its teams, is allowed such movement for observation as is reasonably required for the proper exercise of its functions as stipulated in the Agreement. In carrying out these functions, the International Commission, including its teams, shall enjoy all necessary assistance and cooperation from the parties concerned.

Article 11

In supervising the holding of the free and democratic general elections described in Articles 9(b) and 12(b) of the Agreement in accordance with modalities to be agreed upon between the National Council of National Reconciliation and Concord and the International Commission, the latter shall receive full cooperation and assistance from the National Council.

Article 12

The International Commission and its personnel who have the nationality of a member state shall, while carrying out their tasks, enjoy privileges and immunities equivalent to those accorded diplomatic missions and diplomatic agents.

Article 13

The International Commission may use the means of communication and transport necessary to perform its functions. Each South Vietnamese party shall make available for rent to the International Commission appropriate office and accommodation facilities and shall assist it in obtaining such facilities. The International Commission may receive from the parties, on mutually agreeable terms, the necessary means of communication and transport and may purchase from any source necessary equipment and services not obtained from the parties. The International Commission shall possess these means.

Article 14

The expenses for the activities of the International Commission shall be borne by the parties and the members of the International Commission in accordance with the provisions of this Article:

(a) Each member country of the International Commission shall pay the salaries and allowances of its personnel.

(b) All other expenses incurred by the International Commission shall be met from a fund to which each of the four parties shall contribute twenty-three percent (23%) and to which each member of the International Commission shall contribute two percent (2%).

(c) Within thirty days of the date of entry into force of this Protocol, each of the four parties shall provide the International Commission with an initial sum equivalent to four million, five hundred thousand (4,500,000) French francs in convertible currency, which sum shall be credited against the amounts due from that party under the first budget.

(d) The International Commission shall prepare its own budgets. After the International Commission approves a budget, it shall transmit it to all parties signatory to the Agreement for their approval. Only after the budgets have been approved by the four parties to the Agreement shall they be obliged to make their contributions. However, in case the parties to the Agreement do not agree on a new budget, the International Commission shall temporarily base its expenditures on the previous budget, except for the extraordinary, one-time expenditures for installation or for the acquisition of equipment, and the parties shall continue to make their contributions on that basis until a new budget is approved.

Article 15

(a) The headquarters shall be operational and in place within twenty-four hours after the cease-fire.

(b) The regional teams shall be operational and in place, and three teams for supervision and control of the return of the captured and detained personnel shall be operational and ready for dispatch within forty-eight hours after the cease-fire.

(c) Other teams shall be operational and in place within fifteen to thirty days after the cease-fire.

Article 16

Meetings shall be convened at the call of the Chairman. The International Commission shall adopt other working procedures appropriate for the effective discharge of its functions and consistent with respect for the sovereignty of South Vietnam.

Article 17

The Members of the International Commission may accept the obligations of this Protocol by sending notes of acceptance to the four parties signatory to the Agreement. Should a member of the International Commission decide to withdraw from the International Commission, it may do so by giving three months notice by means of notes to the four parties to the Agreement, in which case those four parties shall consult among themselves for the purpose of agreeing upon a replacement member.

Article 18

This Protocol shall enter into force upon signature by plenipotentiary representatives of all the parties participating in the Paris Conference on Vietnam. It shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

[Separate Numbered Page]

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Republic of Vietnam:

THAN VAN LIAM,
Minister for Foreign Affairs.

[Separate Numbered Page]

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

For the Provisional Revolutionary Government of the Republic of South Vietnam:

NGUYEN THI BINH,
Minister for Foreign Affairs.

PROTOCOL TO THE AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM CONCERNING THE INTERNATIONAL COMMISSION OF CONTROL AND SUPERVISION

The Government of the United States of America, with the concurrence of the Government of the Republic of Vietnam,

The Government of the Democratic Republic of Vietnam, with the concurrence of the Provisional Revolutionary Government of the Republic of South Vietnam,

In implementation of Article 18 of the Agreement on Ending the War and Restoring Peace in Vietnam signed on this date providing for the formation of the International Commission of Control and Supervision,

Have agreed as follows:

[Text of Protocol Articles 1-17 same as above]

Article 18

The Protocol to the Paris Agreement on Ending the War and Restoring Peace in Vietnam concerning the International Commission of Control and Supervision shall enter into force upon signature of this document by the Secretary of State of the Government of the United States of America and the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and upon signature of a document in the same terms by the Secretary of State of the Government of the United States of America, the Minister for Foreign Affairs of the Government of the Republic of Vietnam, the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and the Minister for Foreign Affairs of the Provisional Revolutionary Government of the Republic of South Vietnam. The Protocol shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

Protocol on the Cease-Fire in South Viet-Nam and the Joint Military Commissions

[White House press release dated January 24]

PROTOCOL TO THE AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM CONCERNING THE CEASE-FIRE IN SOUTH VIETNAM AND THE JOINT MILITARY COMMISSIONS

The parties participating in the Paris Conference on Vietnam.

In implementation of the first paragraph of Article 2, Article 3, Article 5, Article 6, Article 10 and Article 17 of the Agreement on Ending the War and Restoring Peace in Vietnam signed on this date which provide for the cease-fire in South Vietnam and the establishment of a Four-Party Joint Military Commission and a Two-Party Joint Military Commission,

Have agreed as follows:

CEASE-FIRE IN SOUTH VIETNAM

Article 1

The High Commands of the parties in South Vietnam shall issue prompt and timely orders to all regular and irregular armed forces and the armed police under their command to completely end hostilities throughout South Vietnam, at the exact time stipulated in Article 2 of the Agreement and ensure that these armed forces and armed police comply with these orders and respect the cease-fire.

Article 2

(a) As soon as the cease-fire comes into force and until regulations are issued by the Joint Military Commissions, all ground, river, sea and air combat forces of the parties in South Vietnam shall remain in place; that is, in order to ensure a stable cease-fire, there shall be no major redeployments or movements that would extend each party's area of control or would result in contact between opposing armed forces and clashes which might take place.

(b) All regular and irregular armed forces and the armed police of the parties in South Vietnam shall observe the prohibition of the following acts:

(1) Armed patrols into areas controlled by opposing armed forces and flights by bomber and fighter aircraft of all types, except for unarmed flights for proficiency training and maintenance;

(2) Armed attacks against any person, either military or civilian, by any means whatsoever, including the use of small arms, mortars, artillery, bombing and strafing by airplanes and any other type of weapon or explosive device;

(3) All combat operations on the ground, on rivers, on the sea and in the air;

(4) All hostile acts, terrorism or reprisals; and

(5) All acts endangering lives or public or private property.

Article 3

(a) The above-mentioned prohibitions shall not hamper or restrict:

(1) Civilian supply, freedom of movement, freedom to work, and freedom of the people to engage in trade, and civilian communication and transportation between and among all areas in South Vietnam;

(2) The use by each party in areas under its control of military support elements, such as engineer and transportation units, in repair and construction of public facilities and the transportation and supplying of the population;

(3) Normal military proficiency training conducted by the parties in the areas under their respective control with due regard for public safety.

(b) The Joint Military Commissions shall immediately agree on corridors, routes, and other regulations governing the movement of military transport aircraft, military transport vehicles, and military transport vessels of all types of one party going through areas under the control of other parties.

Article 4

In order to avert conflict and ensure normal conditions for those armed forces which are in direct contact, and pending regulation by the Joint Military Commissions, the commanders of the opposing armed forces at those places of direct contact shall meet as soon as the cease-fire comes into force with a view to reaching an agreement on temporary measures to avert conflict and to ensure supply and medical care for these armed forces.

Article 5

(a) Within fifteen days after the cease-fire comes into effect, each party shall do its utmost to complete the removal or deactivation of all demolition objects, mine-fields, traps, obstacles or other dangerous objects placed previously, so as not to hamper the population's movement and work, in the first place on waterways, roads and railroads in South Vietnam. Those mines which cannot be removed or deactivated within that time shall be clearly marked and must be removed or deactivated as soon as possible.

(b) Emplacement of mines is prohibited, except as a defensive measure around the edges of military installations in places where they do not hamper the population's movement and work, and movement on waterways, roads and railroads. Mines and other obstacles already in place at the edges of military installations may remain in place if they are in places where they do not hamper the population's movement and work, and movement on waterways, roads and railroads.

Article 6

Civilian police and civilian security personnel of the parties in South Vietnam, who are responsible for the maintenance of law and order, shall strictly respect the prohibitions set forth in Article 2 of this Protocol. As required by their responsibilities, normally they shall be authorized to carry pistols, but when required by unusual circumstances, they shall be allowed to carry other small individual arms.

Article 7

(a) The entry into South Vietnam of replacement armaments, munitions, and war material permitted under Article 7 of the Agreement shall take place under the supervision and control of the Two-Party Joint Military Commission and of the International Commission of Control and Supervision and through such the points of entry only as are designated by the two South Vietnamese parties. The points of entry shall agree on these points of entry within fifteen days after the entry into force of the cease-fire. The two South Vietnamese parties may select as many as six points of entry which are not included in the list of places where teams of the International Commission of Control and Supervision are to be based contained in Article 4(d) of the Protocol concerning the International Commission. At the same time, the two South Vietnamese parties may also select points of entry from the list of places set forth in Article 4(d) of that Protocol.

(b) Each of the designated points of entry shall be available only for that South Vietnamese party which is in control of that point. The two South Vietnamese parties shall have an equal number of points of entry.

Article 8

(a) In implementation of Article 5 of the Agreement, the United States and the other foreign countries referred to in Article 5 of the Agreement shall take with them all their armaments, munitions, and war material. Transfers of such items which would leave them in South Vietnam shall not be made subsequent to the entry into force of the Agreement except for transfers of communications, transport, and other non-combat material to the Four-Party Joint Military Commission or the International Commission of Control and Supervision.

(b) Within five days after the entry into force of the cease-fire, the United States shall inform the Four-Party Joint Military Commission and the International Commission of Control and Supervision of the general plans for timing of complete troop withdrawals which shall take place in four phases of fifteen days each. It is anticipated that the numbers of troops withdrawn in each phase are not likely to be widely different, although it is not feasible to ensure equal numbers. The approximate numbers to be withdrawn in each phase shall be given to the Four-Party Joint Military Commission and the International Commission of Control and Supervision sufficiently in advance of actual withdrawals so that they can properly carry out their tasks in relation thereto.

Article 9

(a) In implementation of Article 6 of the Agreement, the United States and the other foreign countries referred to in that Article shall dismantle and remove from South Vietnam or destroy all military bases in South Vietnam of the United States and of the other foreign countries referred to in that Article, including weapons, mines, and other military equipment at these bases, for the purpose of making them unusable for military purposes.

(b) The United States shall supply the Four-Party Joint Military Commission and the International Commission of Control and Supervision with necessary information on plans for base dismantlement so that those Commissions can properly carry out their tasks in relation thereto.

THE JOINT MILITARY COMMISSIONS

Article 10

(a) The implementation of the Agreement is the responsibility of the parties signatory to the Agreement.

The Four-Party Joint Military Commission has the task of ensuring joint action by the parties in implementing the Agreement by serving as a channel of communication among the parties, by drawing up plans and fixing the modalities to carry out, coordinate, follow and inspect the implementation of the provisions mentioned in Article 10 of the Agreement, and by negotiating and settling all matters concerning the implementation of those provisions.

(b) The concrete tasks of the Four-Party Joint Military Commission are:

(1) To coordinate, follow and inspect the implementation of the above-mentioned provisions of the Agreement by the four parties;

(2) to deter and detect violations; to deal with cases of violation, and to settle conflicts and matters of contention between the parties relating to the above-mentioned provisions;

(3) To dispatch without delay one or more joint teams, as required by specific cases, to any part of South Vietnam, to investigate alleged violations of the Agreement and to assist the parties in finding measures to prevent recurrence of similar cases;

(4) To engage in observation at the places where this is necessary in the exercise of its functions;

(5) To perform such additional tasks as it may, by unanimous decision, determine.

Article 11

(a) There shall be a Central Joint Military Commission located in Saigon. Each party shall designate immediately a military delegation of fifty-nine persons to represent it on the Central Commission. The senior officer designated by each party shall be a general officer, or equivalent.

(b) There shall be seven Regional Joint Military Commissions located in the regions shown on the annexed map and based at the following places:

Regions:	Places	Regions:	Places
I.....	Hue	V.....	Bien Hoa
II.....	Danang	VI.....	My Tho
III.....	Pleiku	VII.....	Can Tho
IV.....	Phan Thiet		

Each party shall designate a military delegation of sixteen persons to represent it on each Regional Commission. The senior officer designated by each party shall be an officer from the rank of Lieutenant Colonel to Colonel or equivalent.

(c) There shall be a joint military team operating in each of the areas shown on the annexed map and based at each of the following places in South Vietnam:

Region I	Phan Rang
Quang Tri	Region V
Phu Bai	An Loc
Region II	Xuan Loc
Hoi An	Ben Cat
Tam Ky	Cu Chi
Chu Lai	Tan An
Region III	Region VI
Kontum	Moc Hoa
Hau Bon	Gleng Trom
Phu Cat	Region VII
Tuy An	Tri Ton
Ninh Hoa	Vinh Long
Ban Me Thuot	Vi Thanh
Region IV	Khanh Hung
Da Lat	Quan Long
Bao Loc	

Each party shall provide four qualified persons for each joint military team. The senior person designated by each party shall be an officer from the rank of Major to Lieutenant Colonel, or equivalent.

(d) The Regional Joint Military Commissions shall assist the Central Joint Military Commission in performing its tasks and shall supervise the operations of the joint military teams. The region of Saigon-Gia Dinh is placed under the responsibility of the Central Commission which shall designate joint military teams to operate in this region.

(e) Each party shall be authorized to provide support and guard personnel for its delegations to the Central Joint Military Commission and Regional Joint Military Commissions, and for its members of the joint military teams. The total number of support and guard personnel for each party shall not exceed five hundred and fifty.

(f) The Central Joint Military Commission may establish such joint sub-commissions, joint staffs and joint military teams as circumstances may require. The Central Commission shall determine the numbers of personnel required for any additional sub-commissions, staffs or teams it establishes, provided that each party shall designate one-fourth of the number of personnel required and that the total number of personnel for the Four-Party Joint Military Commission, to include its staffs, teams, and support personnel, shall not exceed three thousand three hundred.

(g) The delegations of the two South Vietnamese parties may, by agreement, establish provisional sub-commissions and joint military teams to carry out the tasks specifically assigned to them by Article 17 of the Agreement. With respect to Article 7 of the Agreement, the two South Vietnamese parties' delegations to the Four-Party Joint Military Commission shall establish joint military teams at the points of entry into South Vietnam used for replacement of armaments, munitions and war material which are designated in accordance with Article 7 of this Protocol. From the time the cease-fire comes into force to the time when the Two-Party Joint Military Commission becomes operational, the two South Vietnamese parties' delegations to the Four-Party Joint Military Commission shall form a provisional sub-commission and provisional joint military teams to carry out its tasks concerning captured and detained Vietnamese civilian personnel. Where necessary for the above purposes, the two South Vietnamese parties may agree to assign personnel additional to those assigned to the two South Vietnamese delegations to the Four-Party Joint Military Commission.

Article 18

(a) In accordance with Article 17 of the Agreement which stipulates that the two South Vietnamese parties shall immediately designate their respective representatives to form the Two-Party Joint Military Commission, twenty-four hours after the cease-fire comes into force, the two designated South Vietnamese parties' delegations to the Two-Party Joint Military Commission shall meet in Saigon so as to reach an agreement as soon as possible on organization and operation of the Two-Party Joint Military Commission, as well as the measures and organization aimed at enforcing the cease-fire and preserving peace in South Vietnam.

(b) From the time the cease-fire comes into force to the time when the Two-Party Joint Military Commission becomes operational, the two South Vietnamese parties' delegations to the Four-Party Joint Military Commission at all levels shall simultaneously assume the tasks of the Two-Party Joint Military Commission at all levels, in addition to their functions as delegations to the Four-Party Joint Military Commission.

(c) If, at the time the Four-Party Joint Military Commission ceases its operation in accordance with Article 18 of the Agreement, agreement has not been reached on organization of the Two-Party Joint Military Commission, the delegations of the two South Vietnamese parties serving with the Four-Party Joint Military Commission at all levels shall continue temporarily to work together as a provisional two-party joint military commission and to assume the tasks of the Two-Party Joint Military Commission at all levels until the Two-Party Joint Military Commission becomes operational.

Article 19

In application of the principle of unanimity, the Joint Military Commissions shall have no chairman, and meetings shall be convened at the request of any representative. The Joint Military Commissions shall adopt working procedures appropriate for the effective discharge of their functions and responsibilities.

Article 14

The Joint Military Commissions and the International Commission of Control and Supervision shall closely cooperate with and assist each other in carrying out their respective functions. Each Joint Military Commission shall inform the International Commission about the implementation of those provisions of the Agreement for which that Joint Military Commission has responsibility and which are within the competence of the International Commission. Each Joint Military Commission may request the International Commission to carry out specific observation activities.

Article 15

The Central Four-Party Joint Military Commission shall begin operating twenty-four hours after the cease-fire comes into force. The Regional Four-Party Joint Military Commissions shall begin operating forty-eight hours after the cease-fire comes into force. The joint military teams based at the places listed in Article 11 (c) of this Protocol shall begin operating no later than fifteen days after the cease-fire comes into force. The delegations of the two South Vietnamese parties shall simultaneously begin to assume the tasks of the Two-Party Joint Military Commission as provided in Article 12 of this Protocol.

Article 16

(a) The parties shall provide full protection and all necessary assistance and cooperation to the Joint Military Commissions at all levels, in the discharge of their tasks.

(b) The Joint Military Commissions and their personnel, while carrying out their tasks, shall enjoy privileges and immunities equivalent to those accorded diplomatic missions and diplomatic agents.

(c) The personnel of the Joint Military Commissions may carry pistols and wear special insignia decided upon by each Central Joint Military Commission. The personnel of each party while guarding Commission installations or equipment may be authorized to carry other individual small arms, as determined by each Central Joint Military Commission.

Article 17

(a) The delegation of each party to the Four-Party Joint Military Commission and the Two-Party Joint Military Commission shall have its own offices, communications, logistics and transportation means, including aircraft when necessary.

(b) Each party, in its areas of control shall provide appropriate office and accommodation facilities to the Four-Party Joint Military Commission and the Two-Party Joint Military Commission at all levels.

(c) The parties shall endeavor to provide to the Four-Party Joint Military Commission and the Two-Party Joint Military Commission, by means of loan, lease, or gift, the common means of operation, including equipment for communication, supply, and transport, including aircraft when necessary. The Joint Military Commissions may purchase from any source necessary facilities, equipment, and services which are not supplied by the parties. The Joint Military Commissions shall possess and use these facilities and this equipment.

(d) The facilities and the equipment for common use mentioned above shall be returned to the parties when the Joint Military Commissions have ended their activities.

Article 18

The common expenses of the Four-Party Joint Military Commission shall be borne equally by the four parties, and the common expenses of the Two-Party Joint Military Commission in South Vietnam shall be borne equally by these two parties.

Article 19

This Protocol shall enter into force upon signature by plenipotentiary representatives of all the parties participating in the Paris Conference on Vietnam. It shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

(Separate Numbered Page)

For the Government of the United States of America:

WILLIAM F. ROGERS,
Secretary of State.

For the Government of the Republic of Vietnam:

TRAN VAN LAM,
Minister for Foreign Affairs.

(Separate Numbered Page)

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY THINH,
Minister for Foreign Affairs.

For the Provisional Revolutionary Government of the Republic of South Vietnam:

NGUYEN THI HUU,
Minister for Foreign Affairs.

PROTOCOL TO THE AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM CONCERNING THE CEASE-FIRE IN SOUTH VIETNAM AND THE JOINT MILITARY COMMISSIONS

The Government of the United States of America, with the concurrence of the Government of the Republic of Vietnam,

The Government of the Democratic Republic of Vietnam, with the concurrence of the Provisional Revolutionary Government of the Republic of South Vietnam,

In implementation of the first paragraph of Article 2, Article 3, Article 5, Article 6, Article 10 and Article 17 of the Agreement on Ending the War and Restoring Peace in Vietnam signed on this date which provide for the cease-fire in South Vietnam and the establishment of a Four-Party Joint Military Commission and a Two-Party Joint Military Commission,

Have agreed as follows:

(Text of Protocol Articles 1-18 same as above)

Article 19

The Protocol to the Paris Agreement on Ending the War and Restoring Peace in Vietnam concerning the Cease-fire in South Vietnam and the Joint Military Commissions shall enter into force upon signature of this document by the Secretary of State of the Government of the United States of America and the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and upon signature of a document in the same terms by the Secretary of State of the Government of the United States of America, the Minister for Foreign Affairs of the Government of the Republic of Vietnam, the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and the Minister for Foreign Affairs of the Provisional Revolutionary Government of the Republic of South Vietnam. The Protocol shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

Protocol on Mine Clearing in North Vietnam

(White House press release dated January 24)

PROTOCOL TO THE AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM CONCERNING THE REMOVAL, PERMANENT DEACTIVATION, OR DESTRUCTION OF MINES IN THE TERRITORIAL WATERS, PORTS, HARBORS, AND WATERWAYS OF THE DEMOCRATIC REPUBLIC OF VIETNAM

The Government of the United States of America,
The Government of the Democratic Republic of Vietnam,

In implementation of the second paragraph of Article 2 of the Agreement on Ending the War and Restoring Peace in Vietnam signed on this date,

Have agreed as follows:

Article 1

The United States shall clear all the mines it has placed in the territorial waters, ports, harbors, and waterways of the Democratic Republic of Vietnam. This mine clearing operation shall be accomplished by rendering the mines harmless through removal, permanent deactivation, or destruction.

Article 2

With a view to ensuring lasting safety for the movement of people and watercraft and the protection of important installations, mines shall, on the request of the Democratic Republic of Vietnam, be removed or destroyed in the indicated areas; and whenever their removal or destruction is impossible, mines shall be permanently deactivated and their emplacement clearly marked.

Article 3

The mine clearing operation shall begin at twenty-four hundred (2400) hours (GMT) on January 27, 1973. The representatives of the two parties shall consult immediately on relevant factors and agree upon the earliest possible target date for the completion of the work.

Article 4

The mine clearing operation shall be conducted in accordance with priorities and timing agreed upon by the two parties. For this purpose, representatives of the two parties shall meet at an early date to reach agreement on a program and a plan of implementation. To this end:

(a) The United States shall provide its plan for mine clearing operations, including maps of the minefields and information concerning the types, numbers and properties of the mines;

(b) The Democratic Republic of Vietnam shall provide all available maps and hydrographic charts and indicate the mined places and all other potential hazards to the mine clearing operations that the Democratic Republic of Vietnam is aware of;

(c) The two parties shall agree on the timing of implementation of each segment of the plan and provide timely notice to the public at least forty-eight hours in advance of the beginning of mine clearing operations for that segment.

Article 5

The United States shall be responsible for the mine clearance on inland waterways of the Democratic Republic of Vietnam. The Democratic Republic of Vietnam shall, to the full extent of its capabilities, actively participate in the mine clearance with the means of surveying, removal and destruction and technical advice supplied by the United States.

Article 6

With a view to ensuring the safe movement of people and watercraft on waterways and at sea, the United States shall in the mine clearing process supply timely information about the progress of mine clearing in each area, and about the remaining mines to be destroyed. The United States shall issue a communique when the operations have been concluded.

Article 7

In conducting mine clearing operations, the U.S. personnel engaged in these operations shall respect the sovereignty of the Democratic Republic of Vietnam and shall engage in no activities inconsistent with the Agreement on Ending the War and Restoring Peace in Vietnam and this Protocol. The U.S. personnel engaged in the mine clearing operations shall be immune from the jurisdiction of the Democratic Republic of Vietnam for the duration of the mine clearing operations.

The Democratic Republic of Vietnam shall ensure the safety of the U.S. personnel for the duration of their mine clearing activities on the territory of the Democratic Republic of Vietnam, and shall provide this personnel with all possible assistance and the means needed in the Democratic Republic of Vietnam that have been agreed upon by the two parties.

Article 8

This Protocol to the Paris Agreement on Ending the War and Restoring Peace in Vietnam shall enter into force upon signature by the Secretary of State of the Government of the United States of America and the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam. It shall be strictly implemented by the two parties.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

DOCUMENTATION SUBMITTED BY DOD

CURRENT MISSING BY YEAR OF LOSS AND SERVICE AS OF MAR. 31, 1976

Year	USA	USN	USMC	USAF	Total
1964	1	0	1	1	3
1965	4	5	4	16	29
1966	13	9	9	82	113
1967	23	19	12	79	133
1968	70	16	7	77	170
1969	58	5	10	47	120
1970	27	3	1	30	61
1971	29	1	0	19	49
1972	10	21	11	81	123
1973	5	2	0	5	12
1974	0	0	0	0	0
1975	0	0	3	0	3
Total	240	81	58	437	816

Attached are comparative figures showing monetary benefits due the family of military officer killed outright and the monetary benefits due that same member's family when he is carried missing in action (MIA) with a presumptive finding of death occurring at a later date.

In compiling these figures we established the following parameters:

- (1) A military captain (O-3), 29 years old, 8 years service.
- (2) Married, wife age 27, 3 children born Jun 59, Aug 60, and Jan 62.
- (3) Crew member of aircraft downed in SEA, 1 July 1968.
- (4) Wife not gainfully employed during MIA period.

In this comparison, we show only federal monetary benefits due the family of the aforementioned officer when:

- (1) He is declared killed in action (KIA) as of date of incident (1 Jul 68).
- (2) He is carried as MIA from 1 Jul 68 through 30 Jun 75 and on 1 Jul 75 a presumptive finding of death (PFOD) is approved by the Secretary of the appropriate Military Department.

This comparison does not deal with numerous special programs instituted for the benefit of our MIA/PW families (not available to our KIA families), and for which a monetary sum cannot be established. These programs are briefly covered in attachments 1 thru 5.

Attachments are as follows:

- (1) Entitlements of a wife of an MIA, not available to a widow of a KIA.
- (2) Chart showing comparison of MIA family versus KIA family monthly income for period 1 Jul 68 through 30 Jun 75.
- (3) Estimated survivor benefits due MIA wife as of 1 Jul 75 when her husband's status is changed from MIA to KIA as the result of a presumptive finding of death on 1 Jul 75.
- (4) Chart comparing lump-sum survivor benefits due MIA versus KIA family at time of status change.
- (5) Public laws governing benefits.

ENTITLEMENTS OF A WIFE OF AN MIA, NOT AVAILABLE TO A WIDOW OF A KIA

Authorization to reside in military family housing

May reside in housing considered excess to military needs.

Widows may only remain in military family housing for 30-60 days following member's death—they are not authorized to live in excess housing.

FHA Insured Home Loan

Assists in obtaining home loans from private lending institutions.
Protects the lender against possible loss when making a loan to the purchaser.
Repayment of the loan to the lender is insured through mortgage insurance.
Premiums for mortgage insurance are paid by the respective services, normally 1/2 of 1% annually on the principal. The amount is determined by the FHA.
Premium payment by the services for a widow terminates two years after member's death, widow remarries or disposes of property, whichever occurs first.

Storage of Household Goods (HHG)

Normally one year statutory time limit.

Can be extended for MIA wives as long as member continued as MIA.

No lawful authority to extend beyond one year for a widow.

Transportation of Household Goods (HHG/Travel of Dependents)

Widow authorized only one move at government expense.

Must be used within one year of member's death.

Wives of MIAs may be authorized additional moves at government expense in addition to move authorized at time of incident.

Uniformed Services Savings Deposit Program (USSDP)

Member's entire unallotted pay and allowances may be deposited and earn 10% interest per annum, compounded quarterly.

Pay and allowances entitled to receive on the payday immediately before date of deposit, less authorized deductions and allotments for dependents, insurance, etc.

No maximum amount on which interest may be paid in the case of MIA.

Program is now only in existence for MIA members.

Continuation of Pay and Allowances

Includes base pay, flying pay, hazardous duty pay, family separation allowance, basic allowance for quarters, basic allowance for subsistence, clothing allowance (for enlisted members), etc.

Accrued leave, while in a missing status, without regard to any leave accrual limitations currently expressed in law.

When status changed, leave pay is based on leave accrued before entering a missing status (up to 60 days) then maximum of 150 days while MIA—210 days leave total.

Computation of leave includes basic pay, basic allowance for subsistence and basic allowance for quarters.

All periodic pay raises, which include promotion.

Retroactive Social Security Payments

Upon change of status, surviving widows and children entitled to retroactive Social Security payments from date member went MIA.

Widow with two or more children—approximately \$40,000-\$50,000 involved.

All Federal Insurance Contributions Act (FICA) monies that were deducted during MIA period are refunded to survivor.

Promotions

Considered for promotion along with contemporaries.

Automatic promotions to each higher grade upon attainment of selection eligibility up to grade of O6/E9.

Promoted on a fully qualified basis.

Approximately one-half of AF MIAs are O5/O6.

Many were lieutenants/captains at time of shoot-down.

All promotions made while in a missing status are effective for all purposes, even though it is later determined by the Secretary of the Military Departments that the member actually died before promotion.

Income Tax Exemption

All pay allowances of MIA/PW are tax exempt.

Several tax laws amended/passed which liberalize MIA surviving spouse tax burden.

Education Programs

Special consideration at military academies given MIA dependents.

Several private and state organizations offer special scholarships or tuition free educational programs for wives/children of MIA/PW members.

Commercial Life Insurance

Some insurance companies refund premiums paid during MIA period.

One pays interest on face amount of policy during MIA period (company representative states that several hundred thousand dollars involved).

Period	Reason for change	Monthly pay and allowances	Total pay and allowances for period	Total pay for KIA widow for same period	Difference
July 1, 1966 through September 1967 (15)	Initial	\$1,086.23	\$16,293.45	\$7,440.00	\$8,853.45
Oct. 1, 1967 through June 30, 1968 (9)	Pay raise (PR)	1,121.63	10,094.67	4,788.00	5,306.67
July 1, 1968 through June 30, 1969 (12)	Promotion (major) PR and fog (10)	1,283.73	15,404.76	6,600.00	8,804.76
July 1, 1969 through Dec. 31, 1969 (6)	Pay raise	1,383.33	8,299.98	3,398.00	4,901.98
Jan. 1, 1970 through June 30, 1970 (6)	do	1,435.33	8,611.98	3,888.00	4,723.98
July 1, 1970 through Dec. 31, 1970 (6)	Fog (12)	1,514.63	9,087.78	3,888.00	5,199.78
Jan. 1, 1971 through Dec. 31, 1971 (12)	Pay raise	1,594.98	19,139.76	8,136.00	11,003.76
Jan. 1, 1972 through June 30, 1972 (6)	do	1,744.58	10,467.44	4,278.00	6,189.44
July 1, 1972 through Dec. 31, 1972 (6)	Fog (14)	1,803.28	10,819.68	4,590.00	6,229.68
Jan. 1, 1973 through Sept. 30, 1973 (9)	Pay raise	1,885.48	16,969.32	7,119.00	9,850.32
Oct. 1, 1973 through June 30, 1974 (9)	do	1,966.48	17,698.32	7,279.00	10,419.32
July 1, 1974 through Sept. 30, 1974 (3)	Promotion (lieutenant colonel) and fog (16)	2,206.28	6,618.84	2,685.00	3,933.84
Oct. 1, 1974 through June 30, 1975 (9)	Closeout	2,309.72	20,787.48	8,100.00	12,687.48
Total			170,293.46	72,189.00	98,104.46

* KIA yearly income \$8,016; KIA monthly income \$668.
 * MIA yearly income \$18,912; MIA monthly income \$1,576.

MIA WIFE WHOSE HUSBAND'S STATUS IS CHANGED TO KIA EFFECTIVE JULY 1, 1975

ESTIMATED SURVIVOR BENEFITS

Name: Jones, Joe.
 Rank: Lieutenant Colonel.
 As of: July 1, 1975.
 Death Gratuity: \$3,000.
 Service burial—If no remains recovered (adult NOK entitled to make disposition (reimbursable basis)): \$450.
 Social Security Lump Payment (Widow—Payable benefit—if no widow—Other adult NOK making disposition—Reimbursable basis): \$255.
 Dependency and Indemnity Compensation (DIC) Monthly payment for widow and children under 18. If dependent child 18-23 and full time student this amount is increased by \$55 per month—also possible VA education benefits):

Widow	\$387
Children	87
Total	474

SOCIAL SECURITY MONTHLY

Beginning July 1966 to June 1975 (total retroactive) \$42,615.00.
 (If mother was gainfully employed, this figure would be reduced as determined by Social Security Administration.)

Widow and two or more children under 18 at \$561 per month beginning July 1975 to August 1978.

Widow and one child under 18 at \$455 per month beginning September 1978 to January 1980.

Social Security payment if no child under age 18 (only one amount may be received. To be elected by NOK.)

Widow age 60	\$214.50
Widow age 62	248.70
Widow age 65	300.00

Note: All Social Security figures are approximate. Benefits are based on the

monthly earnings for Social Security purposes. The exact amount can only be determined by the Social Security Administration. FICA contributions of approximately over \$2,000.00 will be refunded by the service as part of the unpaid pay and allowances.

SURVIVOR BENEFIT PROGRAM

Member has 20 years or more active service maximum up to 55% of retired pay ----- over ----- years: (Will not complete 20 years service for retirement purposes until June 1977)

Retired pay ----- \$-----
 Annuity -----
 DIO offset -----
 Social Security offset -----

Net amount of annuity -----

GOVERNMENT INSURANCE

SGLI ----- \$20,000.00
 NSLI ----- 0

This is in addition to any commercial life policies as well as a possible refund of any unearned premiums to include interest, depending on the company involved.

USSDP (as of -----) Not used in figures ----- \$-----
 Approximate ----- 16,285.1

ACCRUED LEAVE

May accrue up to 150 days plus whatever leave accrued prior to entering MIA status.

SUMMARY

APPROXIMATE AVAILABLE CASH PAYMENTS

Gratuity	\$3,000.00	Accrued leave	\$16,285.1
AF burial	450.00		
Social Security lump sum	255.00	Total	82,555.1
Social Security retro	42,615.00	DIC	424.1
SGLI	20,000.00	Social Security	561.1
NSLI	0	SBP	0
USSDP	0	Total	985.1

COMPARISON OF LUMP-SUM PAYMENTS

	KIA wife	MIA v
Gratuity	\$3,000.00	\$3,000
Social Security burial	255.00	255
SGLI	10,000.00	20,000
AF burial	0	0
Unpaid leave	1,622.46	16,235
Social Security retroactive	0	43,065
Total	14,877.46	82,555

* The MIA is entitled to the 60 days earned leave member had accrued at time of incident (July 1, 1966) and an additional accrual of 150 days for MIA period. Also she will be paid for this leave at the rates of pay and grade in effect at the time of the status change.

* Social Security figures benefits from the date of the incident (July 1, 1966) and not from the date of the presumptive finding of death unless evidence exist that member survived beyond date of incident. This retroactive lump-sum payment boosts her average yearly income during the MIA period from \$18,921 to \$23,656 while the KIA wife's income average remains \$8,021.

Note: Figures above also do not include the use of the uniformed savings deposit program that is available to MIA, wives only at this time. USSDP interest alone averages over \$430 per month per MIA member.

PERTINENT LAWS

BENEFITS AND LAW

Government Insurance: 38 U.S.C. 701-708.
 Six Months' Death Gratuity and Arrears of Pay (Unpaid Pay and Allowances): 10 U.S.C. 2771; 37 U.S.C. 501(d); and 10 U.S.C. 1475-1480.
 Mortuary Affairs and Personal Property: 10 U.S.C. 1481-1488; 38 U.S.C. 901-905; 24 U.S.C. 281; and 24 U.S.C. 279a.
 Dependency and Indemnity Compensation (DIO) and VA Compensation and Pension: 38 U.S.C. 401-423; 38 U.S.C. 301-360; and 501-543.
 Social Security: 42 U.S.C. 417.
 Travel of Dependents and Transportation of Household Goods: 37 U.S.C. 554.
 VA Guaranteed Loans: 38 U.S.C. 1801-1824.
 Tax Exemptions of Benefits: 38 U.S.C. 3101 and 26 U.S.C. 692.
 Medical Care: 10 U.S.C. 1071-1085.
 Educational Assistance: 38 U.S.C. 1701-1706 and 38 U.S.C. 414(c).
 Government Employment: 5 U.S.C. 2108.
 Retired Serviceman's Family Protection Plan: 10 U.S.C. 1431-1466.
 Federal Employees' Compensation: 5 U.S.C. 8101-8173.
 FHA Insured Home Loans: 12 U.S.C. 1715m.
 Pay Entitlement of Members Missing, Missing in Action, Interned, etc., and Payments to Dependents: 37 U.S.C. 551-557.
 Survivor Benefit Plan: P.L. 92-425, September 21, 1972.

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD BY COL. EARL P. HOPPER,

In reference to the testimony given by General Druen and Dr. Shields on pay and allowances, I would like to comment on a few points they raised, especially those in the written attachments provided the committee for the record.

sation paid to the prisoner or missing man himself, and it is not pay to the wives or families of these men. To cast it in such a light is a third rate charge toward the families and, in fact, the missing men themselves. I also believe this type of testimony is an invasion of privacy of these men and their families.

First, the chart showing the comparison of pay between a wife whose husband was KIA in July 1966 and the man who was declared MIA the same month and year has no objectivity and proves absolutely nothing. It is senseless and evidently is presented for some ulterior motive the reason for which only they know. It is very interesting to note the DOD representatives did not point out that a POW returnee, and his family, was paid the same pay as the MIA from the time of his captivity to his release (given the same parameters). Why wasn't this pointed out to the committee? Doesn't this place these men and their families in the same category as the MIA's and their families up until their return in February and March 1973? Yet, no mention is made of that group.

Second, in reference to the "Authorization to Reside in Military Housing", there is no comment that occupation of military quarters is not "free". If the dependents of a missing man occupied Government quarters, there would be a deduction from his pay in the amount of his rental allowance. This could amount to close to \$300.00 per month—and that is not cheap housing used in the sense which was expressed to the committee. Further, I do not feel there are sufficient numbers of MIA families living in this type of housing which would make it a significant factor as far as it being a benefit.

Third, in reference to the storage of household goods, again I doubt that there are a sufficient number of MIA families using this "entitlement."

Fourth, FHA insured loans are available to a vast number of persons other than the wife of a missing man. This entitlement has been made available to POWs and veterans numbering in the millions over the past years. Again, irrelevant and of no significance.

The DOD representatives leaves the impression that the total pay of the missing men, which they list as an entitlement of the wife, is completely tax free. This is not true. Many states tax the pay of these men even though it may be free of

federal income tax. Additionally, the interest drawn on deposits in the USSD is taxable even by the Federal Government.

Other benefits cited by the representatives of the Defense Department on pay and allowances, entitlements and benefits are not peculiar and beneficial only to the wives and families of the prisoners and missing men who are still unaccounted for, but was and is available to the prisoner returnee. This is important to bring out to prove the MIA wife is not receiving benefits or pay based solely on her present status, but receiving it because Congress voted these benefits long before the Paris Agreements were signed and before the return of some 60 American prisoners of war from North and South Vietnam. It was for all POW and MIAs, returned or unreturned.

Finally, I think it is important to bring to the Committee's attention that these families are not in the unique status of being POW or MIA families of their own choosing. The vast high majority, with only a few exceptions, would gladly give every penny they have today if they could learn what happened to their loved one to bring him home. To present public testimony which contributes absolutely nothing to resolving the POW/MIA problem with even a hint or implication of families fighting status changes for the money involved is an act of perfidy toward the man and his family. I wonder how proud these prisoners and missing men would be of his military service, if he knew there were those who would stoop so low as to slander those who he loved so dearly?

Think about it. It is something to be considered diligently and reverently by this committee.

STATEMENT OF NATIONAL LEAGUE OF FAMILIES OF AMERICAN PRISONERS AND MISSING IN SOUTHEAST ASIA—MAY 12, 1978

STATUS CHANGES

The following is a general outline highlighting the status change situation in chronological order from April 1973 to the present. League personnel will provide

After the return of the POWs in April 1973, less than 100 men were declared dead, actual findings of death, due to information obtained from the returnees. During that time the services also changed the status of some 86 men who were thought to have been lost over water.

May 1973

The services, when holding year reviews on men shot down in 1972, started making presumptive findings of death based on the fact that no new information was available. On May 12, Brig. Gen. Russell Ogan addressed a large group of families in Alameda, California and told them that within a year all the men would have status changes to presumed dead. Attached is an article which pertains to this meeting, as well as transcript of Brig. Gen. Ogan's statements.

Late that month, a group of Arizona-California families met in Los Angeles with Dermot Foley to discuss the possibility of filing a suit to stop the status changes until the constitutionality of the law under which the changes were made could be ruled upon. Detailed information on the *McDonald v. McLucas* suit and the findings of the court, is available from Dermot Foley.

July 1973

McDonald vs. McLucas complaint was filed in the United States District court for the Southern District of New York on July 19, 1973. The judge issued an order to show cause and a temporary restraining order prohibiting the Service Secretaries from taking any action on status changes for a period of ten days.

August 6, 1973

A temporary restraining order was handed down by the court which said reviews on a man's case could be made only if the primary next-of-kin requested such in writing.

March 11, 1974

The court issued its final decree which lifted the restraining order. Essentially the court found that the law was *unconstitutional*, however, if the services took

certain steps to insure due process, the Service Secretaries could hold reviews. The court said that the primary next-of-kin receiving financial benefits was to be notified when a review was planned; provided an opportunity to attend a hearing with legal counsel; and should have reasonable access to information that would be used at the hearing. It should be noted that DoD announced that no classified information would be used in the hearing or review to determine a man's status.

April 1974

Within a month after the court's final decree, casualty officers started telling the families that preparation was under way to resume reviewing the men's cases, under the guidelines of the court decree (copy of court decree enclosed). Attached is a letter the Navy sent to their MIA families explaining status change procedures and saying the reviews would be initiated in the "near future on an individual basis in chronological order of loss date."

April-May 1974

During this time a number of families were contacted regarding scheduled reviews of their man. Attached is a letter to Mr. & Mrs. Herbert Crosby notifying them of a planned review. Also enclosed is the form sent to the families which they must return within the time allowed, expressing their desires as to attend a hearing or not. Enclosed also is a notification of a review sent to Mr. & Mrs. Sam James, however, you'll note in their case that as they are not PNOK, they are not given the opportunity to attend the hearing. During these two months, a number of non-solicited hearings and reviews were held and status changes made. Attached is a letter to Mr. & Mrs. Edwin Harnworth notifying them of the change of status of their son.

May 1974

When family members became aware of the decision to resume status changes, various ways were sought to halt the unwarranted PFODs. In particular, Col. Earl P. Hopper, Sr., AUS-Ret., father of MIA Captain Earl P. Hopper, Jr., of Arizona, contacted Congressman John Rhodes (R-Arizona) and Senator Barry

be made unless the family wanted it made. Several conversations were held with the White House and once again, status reviews and changes slowed down. Copies of the correspondence between Hopper, Rhodes and Goldwater are attached.

During this time the Board of Directors of the National League of Families attempted to reach an agreement with the Defence Department on handling the status reviews. Attached please find an outline for guidelines submitted to DoD. Point number seven was the most important as the families were trying to obtain an agreement that if the PNOK objected to a review, their objection would prevail and the man would remain in a POW or MIA status.

Also at this time, appeals on McDonald vs. McLucas were being made to the United States Supreme Court. Not knowing what the results of the appeals would be, DoD primarily made status changes only at the request of the PNOK and in some cases where they felt the families would not fight the review.

June-August 1974

During the annual meeting of the National League of Families, held in Omaha in late June, an attempt was made to reach an agreement with DoD officials per the guidelines previously submitted by the League. DoD flatly refused to allow the objection of the PNOK to prevail, so some 600 families at the meeting voted overwhelmingly to initiate efforts to have legislation introduced in Congress that would halt status changes and call for a revision of the pertinent sections of the U.S. Code. Attached is a copy of the legislation introduced in the House on August 21 by Congressman Bob Wilson of California.

November 11, 1974

The United States Supreme Court determined they would not rule on the decree issued by the District Court in New York in McDonald vs. McLucas, thereby upholding the March 11 ruling.

November 1974-July 1975

During these months, status reviews and changes were made primarily at the request of the PNOK. DoD unofficially said they would maintain this policy

for an undetermined period of time to see what would happen to the legislation pending in the House and Senate regarding status changes; the possibility the President would grant the League's request to appoint an investigative task force, plus the Montgomery resolution to establish a House Select Committee was gaining support.

However, by July, the legislation seemed to be bogging down. Congress didn't appear to be eager to hold hearings on the status change legislation, the President didn't name a task force, and the Select Committee resolution was meeting opposition in the Rules Committee from Chairman Madden. DoD, noting the bleak outlook for passage of any of the legislation, quietly decided to change their policy and initiate status reviews as per their plan of April 1974. By accident, Bus Mills and Earl Hopper learned of the planned change of policy two days before the League's annual meeting scheduled for mid-July.

Discussions between Mills, Hopper and Dr. Roger Shields brought to light that DoD had apparently decided to change its policy and was going to be initiating status reviews in chronological order; however, they had not yet determined if they should announce their plans to the families at the annual meeting or notify them after they left Washington, D.C. and returned to their homes. Once again Earl Hopper called Congressman Rhodes who was quite dismayed to hear of the problem and agreed that a change in DoD policy at that time would be disastrous. Rhodes called Earl back within the hour after having received assurances from DoD that they would not initiate unrequested status changes at that time.

July 1975-December 1975

In an unofficial meeting with the Select Committee in October, we understand Dr. Roger Shields told the members that DoD would not make status changes except where requested by the PNOK, until the Committee made its findings. Although this policy is not in writing, we understand from the Committee that this is DoD's policy.

The following is an extract from the Regional meeting held at the Naval Air

Now, how long will this last? DoD estimates that it will last from 3 to 5 years. Now, in relating that to status changes, does that mean you are going to have to have a guy missing for another 3 to 5 years? It does not mean that. I would guess, at the outside, in not more than a year from today all status changes will have been made. They will be based upon the fact that no new information has been made available."

"I would say that within the next year everyone will have had a status change to KIA who has not shown up some place. If he has not shown up then he will be in a KIA status."

FINAL DECREE—CLASS ACTION SUIT—McDONALD VERSUS McLUCAS

Plaintiffs, having filed their complaint herein on July 19, 1973, and issued having been joined on September 17, 1973, and upon the Memorandum Decision of the Honorable Charles M. Metzner, dated August 6, 1973, as amended by the Order herein, dated August 8, 1973 and as further amended in the transcript of proceedings held on August 9, 1973, referring this matter to the Chief Judge of this Circuit for certification and reference to a Three-Judge Court, and upon such certification by the said Chief Judge of this Circuit, Honorable Irving J. Kaufman, and upon the agreed facts contained in the "Statement of Facts Stipulated to by the Parties and of Contested Facts" dated October 19, 1973 as filed herein, there being no issues of contested facts considered by this Court, and upon the hearing held before this Court on October 23, 1973, and upon the opinion of this Court dated February 13, 1974,

On motion of Paul J. Curran, United States Attorney for the Southern District of New York, attorney for defendants, it is hereby.

Ordered, adjudged and decreed, that this action may not be maintained as a class action, and it is further

Ordered, adjudged and decreed, that Sections 555 and 556 of Title 37 of the United States Code are, from the date of this decree, declared unconstitutional on their face and as applied insofar as they permit "official reports of death" and "findings of death" to be made without affording notice and an opportunity to be heard, and it is further

Ordered, adjudged and decreed, that the defendants are permanently enjoined from the date of this decree from making "official reports of death" and "findings of death" under Sections 555 and 556 of Title 37 of the United States Code unless the next-of-kin of a serviceman carried as missing in action and currently receiving governmental financial benefits which could be terminated by a status review are given notice of a status review and afforded a reasonable opportunity to attend a hearing, with a lawyer if they so choose, and are given reasonable access to the information upon which the status review will be based and are permitted to present any information which they consider relevant to the proceedings, and it is further

Ordered, adjudged and decreed, that the procedures set forth in the ordering paragraph immediately preceding need only be applied to those next-of-kin, currently receiving governmental benefits which could be terminated by a status review, who demand it after notice.

DEPARTMENT OF THE NAVY,
BUREAU OF NAVAL PERSONNEL,
Washington, D.C., April 29, 1974.

DEAR FAMILY MEMBER: Since our last letter several things have happened which I think will be of interest to you. First, the U.S. District Court for the Southern District of New York has entered a final decree in the McDonald vs. McClucas case. Second, the coalition government has been formed in Laos and we've received some comments from the State Department. Lastly, an update on the activities of the Four-Party Joint Military Team and Joint Casualty Resolution Center in Thailand.

CLASS ACTION SUIT/STATUS DETERMINATIONS

The U.S. District Court for the Southern District of New York entered a final decree on 11 March 1974 in the case of McDonald et al. vs. McClucas et al. The decree ordered that future "official reports of death" and "findings of death" cannot be made without affording certain next of kin notice and an opportunity to be heard.

Thus, the decree requires that prior to a review of a case which could result in a change of status to deceased, the Secretary of the Navy must, in connection with this review, afford the specified NOK the following rights:

- (a) Notice of the pending review of the case.
- (b) A reasonable opportunity to attend a hearing, with a lawyer, if they desire.
- (c) Reasonable access to information upon which the status review will be based.
- (d) The opportunity to present any information which they consider relevant to the proceeding.
- (e) To waive any or all of the above rights.

The decree further ordered that these rights need only be applied to those NOK currently receiving governmental financial benefits which could be terminated by a status review.

The Department of the Navy has promulgated regulations and established procedures to fulfill the requirements of the decree. Those NOK entitled to notice of the status review will be notified of the impending review and their rights and provided with a scheduled hearing date, by certified mail. They will be afforded 21 days from receipt of notification in which to respond whether they elect any of the rights afforded. If after 21 days no response has been received, it will be presumed that the NOK have elected not to exercise the rights afforded. In all cases, the scheduled hearing date will not be earlier than 21 days after receipt of notification. At the request of the NOK, the hearing date may be scheduled for an earlier date or within ten days of the suggested date. All hearings will be held at the Navy Annex in Washington, D.C. and expenses incurred by the NOK are not reimbursable by the government. The hearing shall be closed to the public and limited in attendance to only those NOK and their attorneys who have been afforded and elected the right of attendance.

The Navy currently plans to initiate reviews on MIA cases in the near future on an individual basis in chronological order of loss date. The families will be informed of these reviews through the procedures described above.

In cases where the primary next of kin are not dependent and therefore are not currently receiving governmental financial benefits, the Navy will afford them the same rights as described above for dependent next of kin. Those families waiving their rights for a hearing are advised that the records are available for their review in Washington, D.C. at any time convenient to them.

FORMATION OF NEW GOVERNMENT IN LAOS

We are all vitally interested in the progress of the new government in Laos and what this means with respect to information about our shipmates lost in Laos. Frank Sieverts of the State Department has provided the following information:

After more than 20 years of fighting and negotiating, the two sides in Laos have established a Provisional Government of National Union (PGNU) and a joint National Political Council (JNPC)—combining the communist Lao Patriotic Front (the Pathet Lao) and the Royal Laotian Government (anti-communist). The new government was formally invested by the King of Laos at the royal capital of Luang Prabang on April 5, 1975. It is headed by the pro-Western Prince Souvanna Phouma; his half-brother, communist Prince Souphanouvong, became chairman of the Joint National Political Council.

Formation of the coalition government finally started the clock running on the 60-day period provided in the Laos Protocol of September 14, 1973 for release of all remaining prisoners and withdrawal of foreign troops. The protocol also provided that information on the number of prisoners held plus the names of any who died in captivity were to have been provided by October 14—which did not happen. American officials in Laos are now pressing the communist side to live up to this provision within thirty days from April 5, and to proceed as soon as possible with the accounting for the missing. We have also pressed for the earliest possible release of Emmet Kay, the American civilian employee of Continental Air Services, Inc., whose plane went down in communist territory May 7, 1973.

The State Department, DOD, and the Services will inform families at once if any information is obtained about our POW/MIA's in Laos, including any who may have died in captivity.

American officials have repeatedly reminded Pathet Lao representatives of our strong interest in obtaining information on our men, whether captured, missing or dead. The communists have said they would provide information following formation of the PGNU/JNPC. However, they have indicated this would account for only a small percentage of the more than 300 Americans listed as missing or captured in Laos. The Pathet Lao have also repeatedly said there are no American prisoners in Laos other than Emmet Kay. Regardless of these past statements, our Embassy in Vientiane is continuing to press the communist side for the fullest possible information on all our POW/MIA/DIO's in Laos.

FOUR-PARTY JOINT MILITARY TEAM

The Four-Party Joint Military Team continues to meet twice weekly in Saigon. In March the North Vietnamese released the remains of twenty-three of our men who were previously reported to have "died in captivity." Nine of the twenty-three were Navy flyers. Upon return to U.S. control, they were transported to the Central Identification Laboratory for a comprehensive identification examination. After the examination, the remains were returned to the United States for preparation for delivery to the NOK for interment. The Armed Services Graves Registration Review Board, a board of experts who review the identification results, have approved the identification of all of the twenty-three returned.

We had hoped and continue to hope that the return of the "died in captivity" by the North Vietnamese was indicative of their intent to live up to the provisions of Article 8(b) of the Paris accords, which requires the cooperation of the parties in accounting for the missing and taking care of the graves of the dead. However, the reports of subsequent meetings reveal no tangible evidence of their intent to do this.

JOINT CASUALTY RESOLUTION CENTER

Since May of 1973, the Joint Casualty Resolution Center has conducted seventeen field operations which involved investigation of twenty-two crash sites and nine grave sites. They have recovered sixty-three remains. Of the sixty-three, eighteen have been identified as U.S. and accepted by the Mortuary Affairs

Personnel in the United States. Five have been identified and accepted as Southeast Asia Mongoloids; six were tentatively identified as Southeast Asia Mongoloids, and are pending acceptance. The remaining personnel are still being examined.

The JCRC is currently making a major effort to further develop and expand their Public Communications Program. This program is called PUBCOM. The program was tested in central South Vietnam, where it proved effective and was expanded to the Delta region. It is being further expanded to the area around Saigon. The purpose of the PUBCOM program is to advise the local inhabitants of their mission, and to ask their help in providing information about crash and grave sites. PUBCOM involves all types of media and is proving to be more and more effective. For example, during the past month, the PUBCOM program resulted in the return to the JCRC of the remains of three probable U.S. personnel. Local inhabitants in three different locations reported finding crashes with remains. The local inhabitants with the permission of the local authorities, volunteered to assist in the recovery of these remains. The JCRC analyzed the situation and determined that this could be done if they provided them guidance on the casualty resolution procedures needed to make determinations. They went out and returned the remains to the Central Identification Laboratory where they are undergoing identification procedures. The cooperation of the local inhabitants in these cases is an example of the flexibility of the Joint Casualty Resolution Center, and we hope such cooperation can be expanded and will lead to more success along this line.

The JCRC will continue to do what they can to recover and help resolve cases related to the accessible sites of the some 250 crash sites in South Vietnam. The recent statement of the Provisionary Revolutionary Government that they will no longer cooperate in our humanitarian casualty resolution effort does not represent a change in their policy. They have, in fact, done everything they could to hinder our efforts, and a prime example of this was the ambush conducted against our unarmed casualty resolution forces on 15 December 1973.

NEED-A-LIFT BOOKLETS

In March we mailed out a limited supply of the Need-A-Lift? Booklet to primary next of kin with children. This booklet is provided by The American Legion Education and Scholarship Program and contains excellent information on educational opportunities and scholarships. We have recently received additional copies which are available at your request.

Sincerely,

DAVID H. BAGLEY,
Vice Admiral, U.S. Navy,
Chief of Naval Personnel.

DEPARTMENT OF THE ARMY,
OFFICE OF THE ADJUTANT GENERAL,
Washington, D.C., April 22, 1974.

Mr. and Mrs. HERBERT C. CROSBY,
410 Woolfork Avenue,
Donalsonville, Ga.

DEAR MR. AND MRS. CROSBY: Since my letter of 12 March 1974, a final decree has been entered by the US District Court for the Southern District of New York, based on the opinion filed on 13 February 1974, in the case of *McDonald v. MoLucas* U.S.D.C., S.D.N.Y., (78 Civ. 3190).

The Secretary of the Army has published an addition to Department of the Army Regulation 600-10, The Army Casualty System, which provides for the regulatory procedures associated with the conduct of status reviews of missing service members. An extract of the pertinent section of this regulation is provided as an inclosure to this letter.

The Court decree in the cited case requires that prior to a review of your son's case, which may result in a change in his status, the Secretary of the Army is required in connection with this review, to afford you the following rights:

- (a) Notice of the pending review of the case, which this letter constitutes;
- (b) A reasonable opportunity to attend a hearing;
- (c) To attend the hearing with a lawyer (retained at your own expense);
- (d) Reasonable access to the information upon which the status review will be based; and

(e) The opportunity to present any information which you consider relevant to the proceeding.

You may waive all of the above rights by completing the enclosed form in your own handwriting, signing and mailing it in the pre-addressed envelope provided. The address is also shown at the bottom of the form. Upon receipt of your decision to waive these rights, the Secretary of the Army will proceed with review of Herbert's case and will inform you of his action based upon the review.

However, any or all of the above rights may be elected if you so desire. The attached form provides these options and should be completed, in your own handwriting, dated, signed and mailed in the pre-addressed envelope.

If you elect to exercise your right of attendance at a hearing, you will be contacted upon our receipt of your decision so that a convenient hearing date can be arranged for you. A lapse of 21 days, following your receipt of this letter, without our having received your decision will constitute your waiver of all of the above rights which you have been afforded in connection with the review of your son's case. In any event, whether or not you exercise any or all of the above rights, we will provide you with a summary of circumstances which were considered by the reviewing board and which resulted in the action by the Secretary.

I know that for you this is a most difficult period. If we can be of any further assistance, please contact us at any time.

Sincerely,

VERNE L. BOWERS,
Major General, USA,
The Adjutant General.

ELECTION OF RIGHTS
AFFORDED BY THE SECRETARY OF THE ARMY
IN CONNECTION WITH HIS REVIEW OF THE CASE OF

SSG Rick E. Medaris
NAME

380-46-3912
SSN

Please check and initial all applicable statements:

☐ (I, We) have read and understand the rights which (I, We) have been afforded as stated in the letter with which this form is inclosed.

☐ (I, We) further acknowledge notice of the pending review of the case of the serviceman named above, who is (my, our) _____.

☐ (I, We) do hereby elect to waive all of the rights afforded (me, us) in connection with the pending review of the status of (my, our) _____.

(I, We) Desire:

- ☐ a. To be furnished a brief statement of the facts upon which the status review will be based.
- ☐ b. To attend the hearing.
- ☐ c. To attend the hearing with a privately retained lawyer.
- ☐ d. To have reasonable access to the information from official records upon which status review will be based.
- ☐ e. To have the opportunity to present any information which is considered relevant to the proceeding.

SIGNATURE(S)

RELATIONSHIP TO
SERVICEMAN NAMED ABOVE

DATE

Mail completed form to:

HQDA (DAAG-PSC-P)
200 Stovall Street
Alexandria, Virginia 22332

[Revision to Chapter 8, AR 600-101]

[Added]

SECTION III. STATUS REVIEW BY HQDA

8-12. Status Review.

(a) Pursuant to Chapter 10, Title 37, United States Code, the Secretary of the Army or his designee may elect to review the case of those service members who have been carried in a missing status. This review may be accomplished for the following reasons:

(1) The passage of time without any information which could relate to the likelihood of the member's return to military control;

(2) The unavailability of any information from intelligence sources regarding the status of the service member;

(3) The return to military control of other PW/MIA personnel and the lack of knowledge on their part of any information relating to the status of the missing member;

(4) The remains of the missing personnel are recovered and positively identified;

(5) Such other circumstances as the Secretary of the Army or his designee deem to warrant a review.

(b) The review of the status of the service member will be conducted in the following manner:

(1) The NOK currently receiving governmental financial benefits which could be terminated by a status review will be notified that the status of the member will be reviewed;

(2) NOK entitled to notice will be afforded the opportunity to attend a hearing, with or without a privately retained lawyer, in conjunction with this review;

(3) NOK entitled to notice will be afforded reasonable access to the information upon which the status review will be based. (Documents classified under the criteria specified in AR 380-5 will not be made available to the NOK or to the Hearing Officer. However, every effort will be made to either downgrade the information which is classified or to present it in such a manner as to warrant removal of protective markings. (This may be accomplished by removing that portion of the information which caused it to be classified, such as the location of loss of the service member, the type mission in which he was involved, the source or collection means of the intelligence data, etc., or by unclassified summary.) In the event classified information cannot be downgraded or presented as aforementioned, the classified information will not be made available to the Hearing Officer and may not be considered in the course of the review. Assistance will be provided by the Assistant Chief of Staff for Intelligence, DA, to insure security procedures and data are not compromised;)

(4) NOK entitled to notice will be afforded the opportunity before and during the hearing to present information which they consider relevant to the proceedings. (NOK entitled to notice will be furnished, upon their written request, a brief statement of the facts upon which the status review will be based;)

(5) NOK entitled to notice may elect to exercise any or all of the rights set forth above. Notification of the pending review will be made to the NOK entitled to notice via a registered return receipt requested mail. A reply to this notification indicating the desires of the NOK will be made to the notifying office (Figure 8-1). (The NOK notified will be afforded 21 days from the receipt of notification in which to make an election of the above rights. If no response is received, it will be presumed that the notified NOK have elected not to exercise the rights provided.) NOK who are notified will be furnished pre-addressed indicia envelopes for the purpose of acknowledging the notification of review and electing or waiving applicable rights;

(6) If notified NOK elect to attend a hearing, with or without a privately retained lawyer, a hearing date will be established and the NOK making the election will be informed. Upon written request by notified NOK, a delay in the review may be granted when it can be demonstrated that such a delay would be meaningful to the review or that such a delay would be essential in affording the NOK the opportunity to exercise their rights. A request for delay must be in writing and it must be made to the office conducting the notification. The Adjutant General will appoint a Hearing Officer who shall be a commissioned

officer in the grade of O-4 or above. The hearing will be closed to the public and: (a) limited in attendance to only those NOK and their attorneys who have been afforded and elected the right of attendance; (b) will be non-adversarial in nature. A mechanical recording of the hearing will be prepared but will be transcribed only upon request of and at the expense of the requesting party. However, a summarized record of the hearing will be prepared in every case. (The hearing agenda will be set by the Hearing Officer.) Neither AR 15-6 nor strict rules of evidence apply. The inquiry will be confined to matters of official record and such evidence, to include testimony of witnesses, as the attending NOK may present. The Hearing Officer will insure that attendees are given the opportunity to review the information from official records to be considered in the hearing, that NOK attending are permitted to submit relevant information, and that NOK attending are informed of the final recommendation of the Hearing Officer and the reasons therefor. If requested by the Hearing Officer, The Judge Advocate General will provide an attorney to be present for the hearing to provide legal advice to the Hearing Officer. If requested by the Hearing Officer, the Commander, USA Memorial Affairs Agency will provide a representative who is skilled in the forensic sciences and the identification processes used within that organization;

(7) NOK who have attended the hearing will be furnished, upon their request, a complete copy of the summarized record of the hearing together with the recommendation and supporting reasons to be furnished to The Adjutant General;

(8) If NOK who have attended the hearing or their privately retained lawyer objects to the recommendations of the Hearing Officer, their objections to the recommendations of the Hearing Officer will be incorporated in the file sent forward to The Adjutant General. These objections must be presented to the Hearing Officer within ten calendar days following the date the attending NOK are informed of the Hearing Officer's recommendations so that a decision by The Adjutant General is not unnecessarily delayed. An extension of this time may be granted by the Hearing Officer for good cause shown;

(9) The Hearing Officer will submit the summarized record of the hearing, together with his recommendations and supporting reasons and the NOK objections, if any, to The Adjutant General of the Army who will render a decision as designee of the Secretary of the Army as to the status of the missing service member;

(10) Costs incurred by the attending NOK to include travel, lodging, local transportation, legal fees, transcription costs, witness expenses, reimbursed by the Government.

DEPARTMENT OF THE AIR FORCE,
HEADQUARTERS U.S. AIR FORCE,
Washington, D.C., April 11, 1974.

Mr. and Mrs. SAM E. JAMES,
5817 Taggart Drive,
Hixson, Tenn.

DEAR MR. AND MRS. JAMES: This is to advise you that a review hearing in the case of Captain Samuel L. James will be held to determine whether his missing in action status should be continued or changed by a finding of death or issuance of a report of death. This review hearing is being held for the purpose of assisting the Secretary of the Air Force or his designee in determining what action he should take in this case. The central issue in this review hearing is whether there is any longer a basis for a reasonable presumption that the Air Force member is living. All information available will be carefully considered during this review.

The hearing will be closed and only those persons currently receiving governmental financial benefits from the accounts of the missing member will be afforded an opportunity to appear at the hearing. Those personnel have been advised of their rights by separate correspondence.

If you have any questions concerning this letter or care to discuss it with our office, please feel free to contact us.

Sincerely,

A. W. GRATCH,
Colonel, USAF,
Chief, Casualty Services,
Asst DCS/Personnel for Mil Pers.

DEPARTMENT OF THE AIR FORCE,
HEADQUARTERS U.S. AIR FORCE,
Washington, D.C., May 28, 1974.

Mr. and Mrs. EDWIN T. HARWORTH,
Route Number One,
Elizabeth, Minn.

DEAR MR. AND MRS. HARWORTH: It is with deep regret that I must officially notify you of the termination of the missing status of your son, Senior Master Sergeant Elroy E. Harworth, since he can no longer be presumed to be alive.

Sergeant Harworth was the loadmaster of a C-130 aircraft that departed Da Nang Air Base, Republic of Vietnam, at 1:10 AM, 31 May 1966, with seven other crew members aboard, on a classified mission over North Vietnam. Due to the nature of the mission, radio contact was not established after takeoff. When the aircraft failed to return to Da Nang within a reasonable period following its scheduled arrival time of approximately 3:45 AM, it was declared missing. An intensive search, consisting of Air Force and Navy aircraft and Navy destroyers, was conducted over the intended flight path and surrounding areas with negative results.

There were several reports concerning the downing of a C-130 aircraft that we believe pertain to a single incident. On the morning of 5 June 1966, a New China News Agency broadcast stated the US plane downed on 31 May 1966 was a transport plane and that "all seven" crew members were killed. That evening, a newscast from Hanoi stated the aircraft shot down over Thanh Hoa Province at 1:00 AM, 31 May 1966, was a C-130 transport plane and that "seven US Air Pirates" were killed. Then on 21 June 1966, the Columbia Broadcasting System televised a film showing the wreckage of an aircraft, said by Hanoi to be an American C-130 shot down over Thanh Hoa Province, North Vietnam, on 1 June 1966. A copy of the television tape was secured; but since identifiable parts of the aircraft were not included in the film, it was impossible to identify the aircraft. Subsequently, two North Vietnamese soldiers related during interrogation that a C-130 aircraft went down in Thanh Hoa Province. Both said they saw the wreckage and that all crew members were killed. Although the strong possibility exists that the above evidence pertains to the C-130 in which your son was flying, it cannot be corroborated to conclusively establish that fact.

The review just completed was initiated after the cessation of hostilities with North Vietnam and her allies. It reveals that no supplemental information has been received through the debriefings of former prisoners of war or from any other official or unofficial source which would establish the ultimate fate of Sergeant Harworth. Consideration of the known facts and circumstances and the lapse of time during which no information concerning his whereabouts has been received lead to the conclusion that he may no longer reasonably be presumed to be living. Therefore, under the provisions of Section 555, Title 37, United States Code, his missing status has been terminated by a finding of death, the presumed date being recorded as 28 May 1974. This is not considered to be the actual or probable date of death, but is established in accordance with the cited law for the purpose of terminating pay and settling accounts. An official report of the change in his status has been issued by the Department of the Air Force.

We realize the mental anguish you must feel at this time, and want you to know that your loss is shared by the Air Force. We are continuing our efforts to secure the necessary facts which may lead to the recovery and identification of the remains of all our personnel lost in Southeast Asia. Please be assured that you will be notified immediately if any information is forthcoming about the remains of Sergeant Harworth.

If you desire, our Mortuary Branch at Headquarters USAF, Washington, D.C., will assist you in arranging for a Memorial Service. You may call that office collect at Area Code 202, 325-9380.

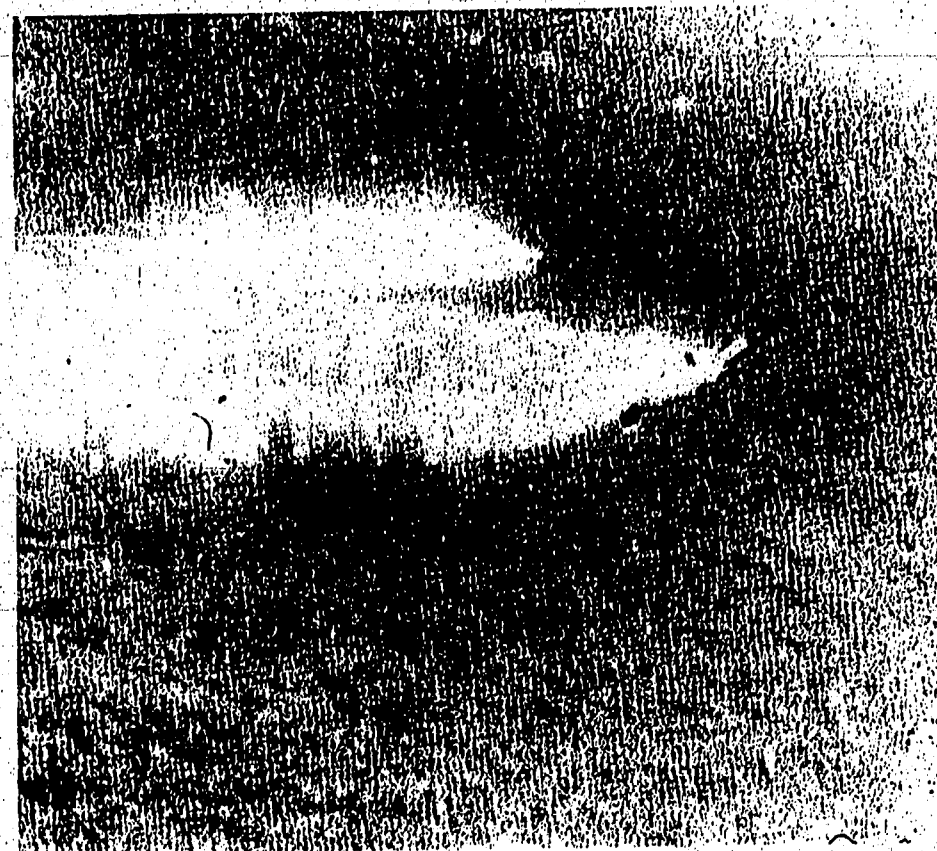
I am extremely sorry that this letter cannot lighten the grief in your home. Please accept my deepest sympathy in your bereavement, and know that our thoughts are with you at this time.

Sincerely,

B. L. DAVIS,
Brigadier General, USAF,
Dep Asst DCS/Per for Mil Pers.



USAF.—A North Vietnamese SA-2 missile was fired upon a U.S. Air Force RF-4C from a site near the Red River area of Hanoi, North Vietnam. The aircraft is seen here in flames following the explosion, 1971 (U.S. Air Force photo).



USAF.—A North Vietnamese SA-2 missile was fired upon an U.S. Air Force RF-4C from a site near the Red River area of Hanoi, North Vietnam. The flaming aircraft begins to turn upward following the explosion, 1971 (U.S. Air Force photo).



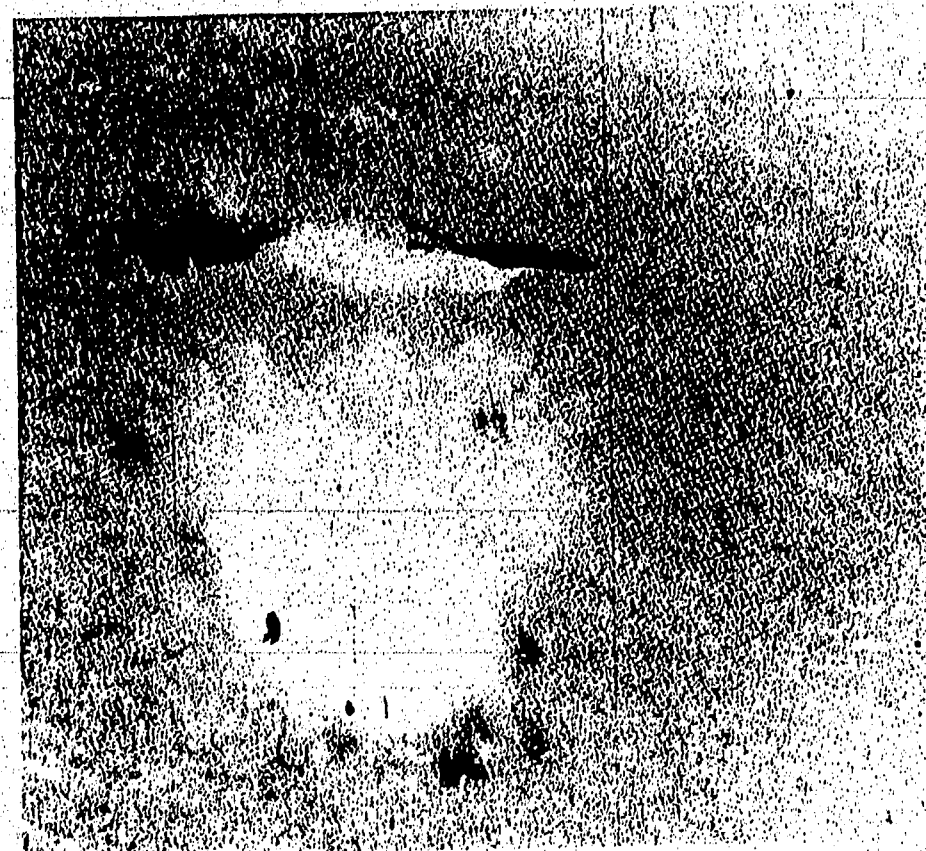
USAF.—A North Vietnamese SA-2 missile was fired upon a U.S. Air Force RF-4C from a site near the Red River area of Hanoi. The flaming aircraft begins to turn upward following the explosion, 1971 (U.S. Air Force photo).



USAF.—A North Vietnamese SA-2 missile was fired upon a U.S. Air Force RF-4C from a site near the Red River area of Hanoi, North Vietnam. The flaming aircraft begins to turn upward following the explosion, 1971 (U.S. Air Force photo).



USAF.—A North Vietnamese SA-2, missile was fired upon a U.S. Air Force RF-4C from a site near the Red River area of Hanoi, North Vietnam. Missile in flight after launch, 1971 (U.S. Air Force photo).



USAF.—A North Vietnamese SA-2 missile was fired upon a U.S. Air Force RF-4C from a site near the Red River area of Hanoi, North Vietnam. The SA-2 missile exploded underneath the RF-4C and a small stream of fire began to trail from its underside, 1971 (U.S. Air Force photo).



In flight after launch, 1971 (U.S. Air Force photo).

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD BY COL. EARL HOPPER AND DERMOT FOLEY

DEAR CONGRESSMAN RHODES: Since speaking to you last week on the missing-in-action issue, there is a new development which requires most urgent and immediate action.

Last week we started hearing rumors that the Service Secretaries were preparing to start changing the status of all men who are missing-in-action to killed-in-action.

Last weekend this was confirmed by another family member of an MIA with Captain Rush, Casualty Branch of Department of the Navy. Monday and Tuesday of this week I talked with Mr. Scott of the Casualty Branch, USAF, Randolph AFB, Texas and Mr. Scott confirmed to me that plans were being made to conduct hearings and reviews of MIA cases in order that status changes can be made.

The status change, as far as the military is concerned, is an administrative action taken "to discontinue pay and allowances to the primary next of kin" (PNOK).

Determination of the status change would be based upon "no new information of the missing man being alive constitutes evidence of him being dead".

Each case would be considered separately and the change of status would be to:

- (1) Killed-in-Action—Report of death. This would be where sufficient evidence is available to prove the man is in fact dead, i.e. identification of remains or eyewitness reports.

We have no argument with this. If proof is provided that a man is dead, then we accept the change.

- (2) Killed-in-Action—Finding of death. This is the same as the status formerly referred to as "presumptive finding of death". It is used when there is no positive proof, i.e. recovery of remains or eyewitness reports, of the death of the

individual, but because he has been absent for a long time and there is no information that he is *alive*, then it is presumed he is dead.

We strongly reject this finding inasmuch as it removes the responsibility from the North Vietnamese to ever account for the man.

Article 8(b) of the Paris Agreement specifically states that each side is responsible for the accounting to the other side for the *missing*. It does not say they must account for the dead—only return their remains.

As soon as our Government removes the missing man from a missing status, the North Vietnamese will know it and will say "We don't have to account for that man now because the US Government says he is dead and not missing." Officials of the military and the Government denies this will happen, but in their denial they express their ignorance of the Communist's way of doing things.

Such a change does not account for the man, but it does leave the family in that continued state of "limbo" with no prospect of ever obtaining an account or knowledge of what happened to their loved one. We have been promised for fifteen months by every one from the President on down that we would receive an accounting of our men and not abandon them.

If the pay and allowances is what they want to discontinue, then find some way to do so, but *don't take the man out of a missing-in-action status*.

The hearings for the review of status will be a stacked deck against the missing man and his PNOK. The *military* is going to produce the evidence that the man is dead and that the status should be changed, the PNOK will defend her/his missing man by attempting to prove that there is no evidence he is dead, but then the *military* will make the decision.

There is no doubt in my mind, or in the minds of other MIA families across this nation, that the Service Secretaries intend to change the statuses of all of these men and, by having the hearings for the review, they were merely waiting for the three-judge court decree issued on March 11th. They could not change the statuses prior to this due to the injunction obtained last year against the Service Secretaries preventing them from doing so, but, if they could have they would have had them changed by now.

The action about to be taken by this United States Constitution... donment of 1800 brave fighting men and their families. This was the very thing promised by President Nixon would never happen.

I am not sure the President knows of this action. With all of his other troubles, he may never have been briefed or informed this is about to happen. I and the other families of the MIAs cannot believe he would allow it to happen.

I ask of you to ascertain whether the President is knowledgeable of this action and, if he is not, then ensure he is made aware of it.

Further, I ask you to use all of the influence you have to persuade the President to stop these reviews for status changes except for those cases where the PNOK wants the change to be made.

In event the President cannot be persuaded to discontinue this action of the Service Secretaries, then I respectfully request you use all of the power and influence you have in Congress, in the State Department and in the Department of Defense to put a stop to these reviews.

If you can stop these reviews, Congressman Rhodes, over 1800 missing men and their families will be forever grateful.

I look forward to hearing from you.
God bless you and good luck.

Sincerely,

EARL P. HOPPER,
Colonel, AUS-Retired,
Arizona State Coordinator.

MAY 8, 1974.

Upon learning President Nixon was to be in Phoenix on May 8, for a Republican rally, I requested a meeting with him in letters to him and to Senator Goldwater and Congressman Rhodes. I was not surprised to receive a letter from General Lawson stating the President declined my request due to his "very pressing schedule".

Following confirmation of the plans by the Service Secretaries that reviews were to be held by each of the Armed Services on changing the status of our POWs and MIAs, I contacted my Senators and Congressmen and asked their assistance in ascertaining whether the President was aware of these plans and, if not, to make him aware of them and to request that he stop them. A copy of my letter to Congressman Rhodes is attached.

Below is a newspaper article quoting Congressman Rhodes on the results of his discussion with the President on the President's plane from Washington to Phoenix. I hope I am not too optimistic in saying the results look promising.

I suggest, as a follow-up to this, that as many family members as possible contact their Senators and Congressmen urging them to use their influence on the President to stop these reviews and status changes.

HOPPER.

[From The Arizona Republic, May 4, 1974]

The Nixons are expected to leave Phoenix at 8:10 a.m. today for Spokane, Wash., where he will take part in opening ceremonies for Expo 74. Rhodes said he and the President discussed a report circulating on Capitol Hill that U.S. servicemen listed as missing in action in Southeast Asia would be reclassified as "killed in action."

The congressman said Nixon was dismayed by the report and said he would look into it.

"I think there will be some modifications in that plan," Rhodes said. "That would be just too much trauma on the families of those missing men." Rhodes said the President's primary mission here was one of "politics and good will."

"He thinks it will be good exposure for him," Rhodes said.

The reception at the airport and another at Camelback Inn tended to prove that theory.

Well-wishers turned out at the airport, crowding into a roped-off area and craning for a glance of Nixon. There were no signs or placards expressing criticism noticeable in the immediate area where the Spirit of 76 taxied to a stop.

There were a few scattered protest signs in a parking lot 500 yards away, however, and the President's motorcade passed that area as it left the airport.

OFFICE OF THE MINORITY LEADER,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., May 9, 1975.

Col. EARL P. HOPPER,
Arizona Families of Missing in Action,
Glendale, Ariz.

DEAR COLONEL HOPPER: I appreciated having your communication along with me when I went to Phoenix with the President on Air Force 1. We discussed at length the situations mentioned in your memorandum, and the President is deeply concerned. He, at that time, indicated his interest in it to Dean Burch.

Since our return I have checked with Dean Burch, and have been assured that it is under the active consideration of the highest circles in the White House.

Please feel sure that I will continue to do my best to make sure this matter is resolved in a manner satisfactory to us and to the families of our MIA's.

Best regards.

Yours sincerely,

[Telegram]

WASHINGTON, D.C., June 7, 1974.

Col. EARL P. HOPPER,
Glendale, Ariz.

Have just called White House. Situation has not changed. MIA status will not change unless spouse or family asks for hearing to change a basic case. No hearings are scheduled as of now unless requested by family. Am looking into the Nordahl case and will advise.

BARRY GOLDWATER.

The following is summary of telephone conversation with Congressman John Rhodes, House Minority Leader, on 6 June which correlates the above White House policy with stated policy of Department of Defense:

Upon being informed of plans of Service Secretaries to hold hearings and reviews of MIA cases for the purpose of changing statuses to KIA, Congressman Rhodes met with Secretary of Defense Schlesinger and was assured "there would be no changes of statuses unless the family or next of kin wanted it that way".

After being informed that the Navy had scheduled hearings for status changes and some were opposed by the NOK, Congressman Rhodes met with Assistant Secretary of Defense Hoffman on or about 4 June and was reassured the information given him by Secretary Schlesinger was correct. Mr. Hoffman informed Congressman Rhodes that "in certain instances" the military will go to the next of kin and ask them if they want a status change. If the NOK does not want the change, then military will "back off". (The *certain instances* cases were not defined.) Mr. Hoffman assured the Congressman that the military will not harass the NOK and, except as explained above, they were not going to do anything unless the NOK came forward and said they would like to have a review or a change in status.

I suggest the following steps be taken by the NOK when notified of a change of status hearing or review and the NOK is opposed to it:

(1) Notify Mr. Dermot Foley at his office (212-MU7-1980) or his home (212-546-1444) immediately.

(2) Send mailgram to Senator Goldwater and Congressman Rhodes giving particulars of notification and case and telling them NOK is opposed to hearings or status change.

(3) Notify National League of Families office at 202-628-6811.

(4) Send official notification to respective service informing them NOK is opposed to changing of status of MIA as well as to conduct of any hearing or review associated with it.

May 6, 1974.

Dr. ROGER O. SHIELDS,
The Pentagon,
Washington, D.C.

DEAR DR. SHIELDS: At the meeting of the Board of Directors of the National League of Families in Seattle, Washington on April 26-27, we discussed at great length the subject of status reviews and hearings. The Board approved and asked me to forward to you the following points which we respectfully request be given careful consideration by the Department of Defense and the Service Secretaries as they proceed with the hearings and reviews. We are most anxious to relieve Primary Next of Kin of the burden of being forced to request a status review, which would be the case, should a restraining order be effected which would once again halt all status reviews regardless of available evidence.

(1) The fact that the man did not list anyone as dependants to receive financial benefits should have no bearing on his Constitutional rights to be represented at the hearing.

(2) We recommend standardization of procedures among all Branches of the Armed Services.

(3) The Service Secretaries should give the Primary Next of Kin and the Secondary Next of Kin a minimum of twenty-one (21) days, after receipt of notice, when they intend to have a preliminary hearing in the case of a serviceman. SNOK should be permitted to attend the hearing.

(4) COIN Assist or other transportation should be provided to the PNOK and, if possible, SNOK.

(5) Failure to respond within twenty-one (21) days, after receipt of notification, constitutes approval of a status review.

(6) All information (including classified) should be made available for the hearing.

(7) If the PNOK objects to the hearing and subsequent review on the basis that there was no new information, the objection should prevail and the MIA status be retained until the provision in the Paris Agreement relating to the fullest possible accounting has been honored. This would be subject to a periodic review under the same conditions.

I have requested that your office arrange a meeting with appropriate officials which should include but not be limited to the General Counsel, Mr. Hoffman, Service Casualty Officers and representatives of the POW/MIA TASK Force. I am convinced such a meeting would be most beneficial and might well preclude the necessity for policy changes later. Please let me hear from you.

Sincerely,

SCOTT ALBRIGHT,
Colonel, USAF, Retired,
Executive Director.

[H.R. 1038, 93d Cong., 2d Sess.]

A BILL To prohibit any change in the status of any member of the uniformed services who is in a missing status under chapter 10 of title 37, United States Code, until the provisions of the Paris Peace Accord of January 27, 1973, have been fully complied with, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding the provisions of sections 555 and 556 of title 37, United States Code, no change in the status of any member of the uniformed services who, on the date of enactment of this Act, is in a missing status as a result of his performance of service in Southeast Asia may be made by the Secretary concerned until—

(1) the Democratic Republic of Vietnam (North Vietnam) and the Provisional Revolutionary Government of South Vietnam have fully complied with the provisions of article 8(b) of the Paris Peace Accord of January 27, 1973, or

(2) the President of the United States (A) has determined that all reasonable actions have been taken to account for such members, and

(B) has reported such determination to the Congress in writing.

(b) As used in subsection (a), the terms "uniformed services", "missing status", and "Secretary concerned" shall have the same meaning ascribed to such terms in chapter 10 of title 37, United States Code.

SEC. 2. The Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives shall each conduct a study of sections 555 and 556 of title 37, United States Code, with a view to determining whether such sections should be amended or repealed. Each such committee shall report the results of its study to the appropriate House of Congress not later than one hundred and eighty days after the date of enactment of this Act together with such recommendations for legislation as such committee deems appropriate.

DERMOT G. FOLEY,
New York, N.Y., March 28, 1975.

Mr. JOHN BECKER,
Office of the Secretary of Defense (Public Affairs),
Washington, D.C.

GENTLEMEN: I submit herewith a demand pursuant to the Freedom of Information Act, as amended, 5 U.S.C. Section 552.

As used in this demand, the following terms shall have the following meanings:

WRITINGS

All documents or records of any nature including, but not limited to, rules, regulations, memoranda, reports, evaluations, communications, instructions, re-statements, sound recordings, computerized materials, demands, inquiries, requests and responses: where any writings were subjected to any alterations or change, the demand includes all versions both before and after each such change and all writings relating to the reasons for, purpose of, authorization for and accomplishment of each such change or alteration.

PARIS AGREEMENT

The Paris Agreement on Ending The War and Restoring Peace in Vietnam signed in Paris on or about January 27, 1973.

MIA

at any time reported to be missing-in-action and/or captured during the period from January 1, 1961 to the date hereof, in North Vietnam, South Vietnam, Laos, Cambodia, China or at sea in areas to which the forces or inhabitants of North Vietnam, South Vietnam, Laos, Cambodia or China had access; the change of status of any such person from missing or captured to any other status shall have no bearing upon this demand and, as to him, all covered documents are sought for the entire period. Thus, please note that the term "MIA" includes POW's.

NEXT-OF-KIN

Means the spouse, children, parents, brothers, sisters and persons who, at any time, were designated as primary and/or secondary next-of-kin (in records of the respective Secretary concerned), of an MIA, if such persons exist, and if they do not, in any particular case, then the persons who share the closest degree of blood relationship to such MIA. The legal representatives of MIA's are also included in "next-of-kin".

The period covered by this demand is January 1, 1961 to date. Production is sought of all covered documents received, filed, written or issued during that period.

No exception is made or intended to be made in the scope of this demand which would exclude any material regardless of whether or not it is classified or of a sensitive nature.

This demand is to be deemed addressed to all covered writings whether held directly by the department or agency to which the demand is addressed or by any other entity over which such department or agency has any authority or control. Thus, under the demand upon the Department of Defense, documents held by such entities as the Departments of Army, Navy and/or Air Force are included in this demand as are documents held by the various casualty offices, the J.C.R.C., the Defense Intelligence Agency and all intelligence or information entities.

The sought materials are described as they are in this letter because we are informed that the document index referred to in the Freedom of Information Act, as amended, has not been completed.

As you know, the amended Act provides that if some parts of a file are exempt from release, that "reasonably segregable" portions shall be provided. I therefore request that, if you determine that some portions of the requested materials are exempt, you provide me immediately with a copy of the remainder of the materials. I, of course, reserve my right to appeal any such decisions.

If you determine that some or all of the materials are exempt from release, I would appreciate your advising me as to which exemption or exemptions you believe cover each of the materials which you are not releasing.

I am prepared to pay reasonable costs for locating and reproducing requested materials. If such charges exceed \$700, please proceed with processing this demand, but inform me as early as possible by phone and do not proceed with further expenses beyond the said \$700 until I authorize it.

As you know, the amended Act permits you to reduce or waive the fees if that "is in the public interest because furnishing the information can be considered as primarily benefitting the public." I believe that this request plainly fits that category. Apart from legitimate general public interest, the basis for this belief includes: the fact that I am the brother of an MIA; I am also counsel to the National League of Families of Prisoners and Missing in Southeast Asia; and, I intend to make the materials furnished in response to this demand generally available for the use, benefit and information of MIA families. Accordingly, I request that you waive all fees.

As provided for in the amended Act, I will expect to receive a reply within 10 working days. If any extension of time is sought, furnish all of the materials that can be furnished within the 10-day period without holding the same during any extended period.

Production of the following is hereby demanded:

(1) The official text of the Paris Agreement and the Protocols executed in connection with the said Paris Agreement;

(2) All writings respecting understandings and/or agreements concerned with the ending of hostilities in Vietnam, the release of POW's, the accounting for MIA's, the return of the remains of deceased U.S. citizens, and the search for and the exchange of information respecting POW's, MIA's and deceased U.S. citizens;

(3) All writings respecting the obligation or duty of the North Vietnamese, Viet Cong, Pathet Lao, Khmer Rouge and/or their colleagues, affiliates or allies:

(a) To account for and/or to cooperate in the search and accounting for MIA's;

(b) To furnish information concerning and to release captured Americans; and

(c) To locate and return the remains of Americans who died while MIA's.

(4) All writings respecting the continuation of the obligation or duty of the North Vietnamese, the Viet Cong, the Pathet Lao and/or Khmer Rouge to account for and/or to provide information concerning MIA's after their missing or captured status has been terminated by a determination of death, presumptive or otherwise;

(5) All writings respecting any obligation or duty of the North Vietnamese to secure or cooperate in obtaining from the Viet Cong, Pathet Lao, Khmer Rouge and/or their colleagues, affiliates or allies:

(a) A search for and accounting for and information concerning MIA's;

(b) Information concerning the release of captured Americans; and

(c) The location and return of the remains of Americans who died while MIA's.

(6) All writings not encompassed by Items 3, 4 and 5 of this demand, respecting:

(a) The search for and accounting of MIA's;

(b) Information concerning Americans captured during the Indo-China conflict; and

(c) The location and return of the remains of Americans who died while MIA's.

(7) All writings respecting demands, inquiries or requests made, responses given and/or positions taken by the negotiating parties during the negotiations which preceded the Paris Agreement, which relate to or concern:

(a) The search for and accounting of MIA's;

(b) The furnishing of information concerning and the release of captured Americans; and

(c) The location and return of the remains of deceased Americans.

(8) All writings during the period from January 1, 1961 to date, respecting sightings of or other information concerning persons, whether identified or unidentified, who, at any time, were known to be or were considered possibly to be captured Americans in Southeast Asia, including but not limited to the following:

(a) Original reports of actual sightings;

(b) Original reports of information other than actual sightings;

(c) All reports on, evaluations of, additions to, deletions from and/or modifications, changes or other alterations of such original reports of sightings or other information;

(d) All identifications or tentative identifications made from such reports and/or changes thereof; and

(e) All writings respecting instances where no such identification or tentative identification was made.

(9) All writings respecting:

(a) Standards, criteria and/or guidelines in the receipt, maintenance, evaluation, correction, modification, alteration and/or destruction of information respecting MIA's;

(b) Standards, criteria and/or guidelines in the maintenance of and/or disposition of past records of such information after re-evaluation, correction, modification or alteration has been made with respect hereto; and

(c) Standards, criteria and/or guidelines respecting the availability of such information, in both its present and all former conditions and forms, to the families of MIA's.

(10) All writings respecting information, advice, instructions and/or recommendations offered or given during the period to returnee POW's concerning contacts, dealings of communications with other persons on subjects related to MIA's generally and/or particular MIA's.

(11) All writings respecting contacts, dealings or communications which, during the period, actually occurred and/or were attempted between returnee POW's and other persons on subjects related to MIA's generally and/or particular MIA's.

(12) All writings respecting rules, regulations, policies and/or procedures for status reviews under the Missing Persons Act (37 U.S.C. §§ 552 et seq.) at all times during the period covered by this demand and all changes, modifications or alterations in such rules, regulations, policies and/or procedures.

(13) All writings respecting access by the next-of-kin of MIA's to evidence or information and/or provision of notice and a hearing opportunity for such next-of-kin, prior to status reviews, throughout the covered period.

(14) All writings respecting contacts made with and advice given to next-of-kin concerning the availability of and/or the desirability of status reviews and all writings dealing with policy and/or procedure on this subject.

(15) All writings respecting the examination and/or evaluation of MIA records, made in anticipation of status reviews, and/or which would have impact upon the ability of those who wish to resist a status review, to do so.

(16) All writings respecting information and/or briefings given to journalists, newsmen, commentators, authors or their representatives concerning: MIA's generally; MIA's in particular; the MIA accounting; MIA survival; MIA sightings; communication and/or negotiations with foreign governments, organizations or other entities respecting MIA's; and/or the activities and/or motives of persons who have shown disinclination to accept a status change and/or who have participated in activities concerning MIA's.

(17) All writings respecting the evaluation of survival training given to members of the Armed Forces prior to assignment to the area of hostilities in Indo-China during the period.

(18) All writings respecting procedures, requirements, documentation and criteria for the reporting of a casualty at all times during the period, and all subsequent steps up to and including a determination that the subject individual is in missing status.

(19) All writings respecting evaluations of the reactions of the North Vietnamese, Viet Cong, Pathet Lao, and Khmer Rouge to publicity regarding their treatment of captured and/or missing persons.

(20) All writings respecting each request, and the consequences of each request, during the period for a Secretarial reconsideration, pursuant to 37 U.S.C. § 556(d), of a determination of death under the Missing Persons Act.

(21) All writings respecting each request, and the consequences of each request, during the period for a review by the Board of Record Correction pursuant to 10 U.S.C. § 1552, of a determination of death under the Missing Persons Act.

(22) All writings with respect to each protest received from next-of-kin of an MIA who was the subject of a determination of death during the period, which protest was not made under the provisions of 37 U.S.C. § 556(d) or 10 U.S.C. § 1552 and all writings responding to and/or made in consequence of each such protest.

(23) All writings concerning any expectation or any possibility of assistance, aid and/or cooperation being obtainable or becoming obtainable from representatives and/or the governments of the Peoples Republic of China and/or the U.S.S.R., in the search for the accounting respecting, the release of and/or the furnishing of information about Americans believed missing or captured in North Vietnam, South Vietnam, Laos, Cambodia, China or any adjacent territory or waters, including, but not limited to all communications with and responses from such representatives and/or governments and all writings respecting such communications and responses.

(24) All writings concerning standards, guidelines, criteria, policies and procedures of the Department or agency to whom this demand is addressed, for dealing with, evaluating, complying with and/or not complying with demands made under the Freedom of Information Act.

In the event there is any duplication of documents produced under different items of the above listing, please furnish the documents in question in response to the first item to which they are responsive, and in response to succeeding items, rather than duplicate the documents, simply identify and incorporate them in the response by reference.

In the event that any documents sought under this demand are available from or are in the possession or under the control of any other department or agency of the United States Government, kindly identify the documents and state who has possession and control thereof.

Very truly yours,

KAPLAN, KILSHEIMER & FOLEY,
New York, N.Y., May 4, 1973.

Capt. JOHN WEINIG,
AF MPC/DPMSOB,
Randolph Air Force Base, Texas.

DEAR CAPTAIN: I am sending you this letter in confirmation of our telephone conversation of May 3rd.

You will recall that I telephoned you because I wished to obtain information with respect to KIA determination hearings and, in particular, the right of family members to intervene and participate in the hearings, the scope and right to appeal, and whether or not the family members are even informed of the pendency of a hearing or determination respecting the individual with whom they are concerned.

I would also appreciate it if a copy of the rules and regulations, if any relevant to such proceedings, both procedural and from the point of view of admissible evidence and related matters, could be furnished to me or if I could be advised where the same could be found.

A glance at the Code of Federal Regulations has not yielded any results in this regard but there might be something that I missed there.

As you indicated, you are in a position to forward this letter to appropriate authoritative persons who will be in a position to render some help.

I sincerely appreciate your cooperation in this matter.

Very truly yours,

DERMOT G. FOLEY.

DEPARTMENT OF THE AIR FORCE,
HEADQUARTERS AIR FORCE MILITARY PERSONNEL CENTER,
RANDOLPH AIR FORCE BASE, TEX., May 9, 1973.

Mr. DERMOT G. FOLEY,
Attorney-At-Law,
New York, N.Y.

DEAR MR. FOLEY: This is in reply to your letter of 4 May 1973, pertaining to your brother, Lieutenant Colonel Brendan P. Foley, and status determinations.

As indicated in our conversation on 3 May 1973, I referred your letter to Colonel Milton E. Kosa, the Staff Judge Advocate, at the Military Personnel Center. His reply is quoted for your information.

Reference your letter of May 4, 1973. As I am sure you already know, the Secretary of the Air Force has delegated authority to make status determinations under 37 USC 555 and 556 to the Assistant Deputy Chief of Staff, Personnel, for Military Personnel (AF/DPM) who personally decides each case on its own merits.

There are no published service regulations, rules, evidentiary standards, or procedures prescribed in implementation of the law. Next of kin are not routinely advised of an impending status determination. Of course, if there is any indication that they have evidence or arguments to offer germane to the status of a member they are extended an opportunity to do so. The status determination decision making process is not, however, an adversary proceeding bound by formal rules of evidence or procedures. Nor does the law contemplate or provide for personal hearings or appearances before the Secretarial delegatee by next of kin either in person or by counsel.

There is no appeal to the Secretarial determination which is conclusive even as to whether information received is to be construed and acted on as an official report of death.

Should you have additional questions pertaining to the law, I suggest you write Colonel Kosa directly. His address is: AFMPC/JA, Randolph AFB, TX 78148. Please continue to contact this office at any time we can be of further assistance in any other matters pertaining to your brother.

Sincerely,

J. W. WEINIG,
Captain, USAF,

Missing Persons Branch, Casualty Services.

EXHIBIT I—SUBMITTED BY DERMOT FOLEY

KAPLAN, KILSHEIMER & FOLEY,
New York, N.Y., May 4, 1973.

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AF MPC/DPMSOB,
Randolph Air Force Base, Tex.

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Very truly yours,

DERMOT G. FOLEY.

DEPARTMENT OF THE AIR FORCE,
HEADQUARTERS AIR FORCE MILITARY PERSONNEL CENTER,
Randolph Air Force Base, Tex., May 9, 1973.

Mr. DERMOT G. FOLEY,
Attorney-At-Law,
122 East 42d St., New York, N.Y.

DEAR MR. FOLEY: This is in reply to your letter of 4 May 1973, pertaining to your brother, Lieutenant Colonel Brendan P. Foley, and status determinations.

As indicated in our conversation on May 3, 1973, I referred your letter to Colonel Milton E. Kosa, the Staff Judge Advocate, at the Military Personnel Center. His reply is quoted for your information.

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Should you have additional questions pertaining to the law, I suggest you write Colonel Kosa directly. His address is: AFMPC/JA, Randolph AFB, TX 78148. Please continue to contact this office at any time we can be of further assistance in any other matters pertaining to your brother.

Sincerely,

Capt. J. W. WEINIG, USAF,
Missing Persons Branch,
Casualty Services.

EXHIBIT II--SUBMITTED BY DERMOT FOLEY

DERMOT G. FOLEY,

NEW YORK, N.Y., March 28, 1975.

MR. JOHN BECKER,
Office of the Secretary of Defense (Public Affairs),
Washington, D.C.

GENTLEMEN: I submit herewith a demand pursuant to the Freedom of Information Act, as amended, 5 U.S.C. Section 552.

As used in this demand, the following terms shall have the following meanings:
Writings—all documents or records of any nature including, but not limited to, rules, regulations, memoranda, reports, evaluations, communications, instructions, statements, sound recordings, computerized materials, demands, inquiries, requests and responses; where any writings were subjected to any alteration or change, the demand includes all versions both before and after each such change and all writings relating to the reasons for, purpose of, authorization for and accomplishment of each such change or alteration.

Paris Agreement—the Paris Agreement on Ending The War and Restoring Peace in Vietnam signed in Paris on or about January 27, 1973.

MIA—members of the Armed Forces of the United States, both individually and as a group or class, who became, or are believed to have become, or who were at any time reported to be missing-in-action and/or captured during the period from January 1, 1961 to the date hereof, in North Vietnam, South Vietnam, Laos, Cambodia, China or at sea in areas to which the forces or inhabitants of North Vietnam, South Vietnam, Laos, Cambodia or China had access; the change of status of any such person from missing or captured to any other status shall have no bearing upon this demand and, as to him, all covered documents are sought for the entire period. Thus, please note that the term "MIA" includes POW's.

Next-of-kin—means the spouse, children, parents, brothers, sisters and persons who, at any time, were designated as primary and/or secondary next-of-kin (in records of the respective Secretary concerned), of an MIA, if such persons exist, and if they do not, in any particular case, then the persons who share the closest degree of blood relationship to such MIA. The legal representatives of MIA's are also included in "next-of-kin".

The period covered by this demand is January 1, 1961 to date. Production is sought of all covered documents received, filed, written or issued during that period.

No exception is made or intended to be made in the scope of this demand which would exclude any material regardless of whether or not it is classified or of a sensitive nature.

This demand is to be deemed addressed to all covered writings whether held directly by the department or agency to which the demand is addressed or by any other entity over which such department or agency has any authority or control. Thus, under the demand upon the Department of Defense, documents held by such entities as the Departments of Army, Navy and/or Air Force are included in this demand as are documents held by the various casualty offices, the J.O.R.C., the Defense Intelligence Agency and all intelligence or information entities.

The sought materials are described as they are in this letter because we are informed that the document index referred to in the Freedom of Information Act, as amended, has not been completed.

As you know, the amended Act provides that if some parts of a file are exempt from release, that "reasonably segregable" portions shall be provided. I therefore request that, if you determine that some portions of the requested materials are exempt, you provide me immediately with a copy of the remainder of the materials. I, of course, reserve my right to appeal any such decisions.

If you determine that some or all of the materials are exempt from release, I would appreciate your advising me as to which exemption or exemptions you believe cover each of the materials which you are not releasing.

I am prepared to pay reasonable costs for locating and reproducing requested materials. If such charges exceed \$700, please proceed with processing this demand, but inform me as early as possible by phone and do not proceed with further expenses beyond the said \$700 until I authorize it.

As you know, the amended Act permits you to reduce or waive the fees if that "is in the public interest because furnishing the information can be con-

sidered as primarily benefitting the public." I believe that this request plainly fits that category. Apart from legitimate general public interest, the basis for this belief includes: the fact that I am the brother of an MIA; I am also counsel to the National League of Families of Prisoners and Missing in Southeast Asia; and, I intend to make the materials furnished in response to this demand generally available for the use, benefit and information of MIA families. Accordingly, I request that you waive all fees.

As provided for in the amended Act, I will expect to receive a reply within 10 working days. If any extension of time is sought, furnish all of the materials that can be furnished within the 10-day period without holding the same during any extended period.

Production of the following is hereby demanded:

1. The official text of the Paris Agreement and the Protocols executed in connection with the said Paris Agreement;

2. All writings respecting understandings and/or agreements concerned with the ending of hostilities in Vietnam, the release of POW's, the accounting for MIA's, the return of the remains of deceased U.S. citizens, and the search for and the exchange of information respecting POW's, MIA's and deceased U.S. citizens;

3. All writings respecting the obligation or duty of the North Vietnamese, Viet Cong, Pathet Lao, Khmer Rouge and/or their colleagues, affiliates or allies:

(a) to account for and/or to cooperate in the search and accounting for MIA's;

(b) to furnish information concerning and to release captured Americans; and

(c) to locate and return the remains of Americans who died while MIA's;

4. All writings respecting the continuation of the obligation or duty of the North Vietnamese, the Viet Cong, the Pathet Lao and/or Khmer Rouge to account for and/or to provide information concerning MIA's after their missing or captured status has been terminated by a determination of death, presumptive or otherwise;

5. All writings respecting any obligation or duty of the North Vietnamese to secure or cooperate in obtaining from the Viet Cong, Pathet Lao, Khmer Rouge and/or their colleagues, affiliates or allies:

(a) a search for and accounting for and information concerning MIA's;

(b) information concerning and the release of captured Americans; and

(c) the location and return of the remains of Americans who died while MIA's;

6. All writings not encompassed by Items 3, 4 and 5 of this demand, respecting:

(a) the search for and accounting of MIA's;

(b) information concerning Americans captured during the Indo-China conflict;

(c) the location and return of the remains of Americans who died while MIA's;

7. All writings respecting demands, inquiries or requests made, responses given and/or positions taken by the negotiating parties during the negotiations which preceded the Paris Agreement, which relate to or concern:

(a) the search for and accounting of MIA's;

(b) the furnishing of information concerning and the release of captured Americans; and

(c) the location and return of the remains of deceased Americans;

8. All writings during the period from January 1, 1961 to date, respecting sightings of or other information concerning persons, whether identified or unidentified, who, at any time, were known to be or were considered possibly to be captured Americans in Southeast Asia, including but not limited to the following:

(a) original reports of actual sightings;

(b) original reports of information other than actual sightings;

(c) all reports on, evaluations of, additions to, deletions from and/or modifications, changes or other alterations of such original reports, of sightings or other information;

(d) all identifications or tentative identifications made from such reports and/or changes thereof; and

(e) all writings respecting instances where no such identification or tentative identification was made;

9. All writings respecting:

(a) Standards, criteria and/or guidelines in the receipt, maintenance, evaluation, correction, modification, alteration and/or destruction of information respecting MIA's;

(b) Standards, criteria and/or guidelines in the maintenance of and/or disposition of past records of such information after re-evaluation, correction, modification or alteration has been made with respect hereto;

(c) Standards, criteria and/or guidelines respecting the availability of such information, in both its present and all former conditions and forms, to the families of MIA's;

10. All writings respecting information, advice, instructions and/or recommendations offered or given during the period to returnee POW's concerning contacts, dealings of communications with other persons on subjects related to MIA's generally and/or particular MIA's;

11. All writings respecting contacts, dealings or communications which, during the period, actually occurred and/or were attempted between returnee POW's and other persons on subjects related to MIA's generally and/or particular MIA's;

12. All writings respecting rules, regulations, policies and/or procedures for status reviews under the Missing Persons Act (37 U.S.C. §§ 552 et seq.) at all times during the period covered by this demand and all changes, modifications or alterations in such rules, regulations, policies and/or procedures;

13. All writings respecting access by the next-of-kin of MIA's to evidence or information and/or provision of notice and a hearing opportunity for such next-of-kin, prior to status reviews, throughout the covered period;

14. All writings respecting contacts made with and advice given to next-of-kin concerning the availability of and/or the desirability of status reviews and all writings dealing with policy and/or procedure on this subject;

15. All writings respecting the examination and/or evaluation of MIA records, made in anticipation of status reviews, and/or which would have impact upon the ability of those who wish to resist a status review, to do so;

16. All writings respecting information and/or briefings given to journalists, newsmen, commentators, authors or their representatives concerning: MIA's generally; MIA's in particular; the MIA accounting; MIA survival; MIA sightings; communication and/or negotiations with foreign governments, organizations or other entities respecting MIA's; and/or the activities and/or motives of persons who have shown disinclination to accept a status change and/or who have participated in activities concerning MIA's;

17. All writings respecting the evaluation of survival training given to members of the Armed Forces prior to assignment to the area of hostilities in Indo-China during the period;

18. All writings respecting procedures, requirements, documentation and criteria for the reporting of a casualty at all times during the period, and all subsequent steps up to and including a determination that the subject individual is in missing status;

19. All writings respecting evaluations of the reactions of the North Vietnamese, Viet Cong, Pathet Lao, and Khmer Rouge to publicity regarding their treatment of captured and/or missing persons;

20. All writings respecting each request, and the consequences of each request, during the period for a Secretarial reconsideration, pursuant to 37 U.S.C. § 556 (d), of a determination of death under the Missing Persons Act;

21. All writings respecting each request, and the consequences of each request, during the period for a review by the Board of Record Correction pursuant to 10 U.S.C. § 1552, of a determination of death under the Missing Persons Act;

22. All writings with respect to each protest received from next-of-kin of an MIA who was the subject of a determination of death during the period, which protest was not made under the provisions of 37 U.S.C. § 556 (d) or 10 U.S.C. § 1552 and all writings responding to and/or made in consequence of each such protest;

23. All writings concerning any expectation or any possibility of assistance, aid and/or cooperation being obtainable or becoming obtainable from representatives and/or the governments of the Peoples Republic of China and/or the U.S.S.R. in the search for the accounting respecting, the release of and/or the furnishing of information about Americans believed missing or captured in North Vietnam, South Vietnam, Laos, Cambodia, China or any adjacent territory or waters, including, but not limited to all communications with and responses from such

representatives and/or governments and all writings respecting such communications and responses;

24. All writings concerning standards, guidelines, criteria, policies and procedures of the Department or agency to whom this demand is addressed, for dealing with, evaluating, complying with and/or not complying with demands made under the Freedom of Information Act.

In the event there is any duplication of documents produced under different items of the above listing, please furnish the documents in question in response to the first item to which they are responsive, and in response to succeeding items, rather than duplicate the documents, simply identify and incorporate them in the response by reference.

In the event that any documents sought under this demand are available from or are in the possession or under the control of any other department or agency of the United States Government, kindly identify the documents and state who has possession and control thereof.

Very truly yours,

DERMOT G. FOLEY.

EXHIBIT IV—SUBMITTED BY DERMOT FOLEY

MEMORANDUM TO THE HOUSE SELECT COMMITTEE ON MISSING PERSONS FROM
DERMOT G. FOLEY

This memorandum deals with reforms which I believe are needed in the manner in which determinations of death are made under the Missing Persons Act (37 U.S.C. secs. 555 and 556). It is submitted at the recommendation of Rep Benjamin Gilman of the House Select Committee ON Missing Persons and request that it be added as an Exhibit to my testimony given to that Committee on May 12, 1976.

While not complete, I submit that the following reforms are absolutely necessary.

1. The conflict of interest which arises through having the Defense Department act as the real complainant, the prosecutor, the judge, the jury, the selector of what evidence will be included and excluded, and the party in control of all relevant evidence, as is presently the case, should cease. This could be accomplished by putting the power to adjudicate in the hands of the Courts or of independent, objective individuals or agencies with no other Defense or State Department or Administration connections or obligations. The role of the Defense Department should be limited to presenting its case and satisfying a defined burden of proof.

2. Procedural and evidentiary rules for status reviews should be implemented which would assure generous Due Process rights and other protections for the POW or MIA who is the subject of such a status review, as well as for his family. Since one or two members of such a family may have interest which do not necessarily coincide with those of the subject serviceman or those of other members of his family, such rights should be extended to the spouse, children, parents, brothers and sisters of the serviceman being reviewed and the individual rights of the serviceman himself must be represented. Such provisions should treat, in detail: notice, hearing, access to information, pre-hearing rights, right to counsel, etc. They should also require the military to produce witnesses and evidence without cost to the family involved and the hearing should be held at a location reasonably convenient to the majority of those family members who wish to attend. In addition, the serviceman's family should be compensated reasonably for their expenses in participating in the status review, including travel costs, attorneys' fees and the cost of transcripts, briefs and appeals.

3. Standards and guidelines must be promulgated which govern when and under what circumstances to convene a status review or to make a determination of death. Under no circumstances should such decisions be left to the whim or discretion of the Service Secretary as the Defense Department claims is now the case under the Missing Persons Act. Where no evidence of the fact of death exists, and someone wants a presumptive determination, there should be minimum requirements which would include the completion of all possible search procedures and other efforts to account for the man in question. Standards of this

assure him he would most likely receive medical treatment in a few days because things had been relatively quiet for some time. The Camp Commander then instructed me to leave but before I left he said Mike was being taken to a hospital the next day. Mike spent the night with us and the next morning we continued to move and I never saw Mike again. In my opinion he was a very strong-willed person and if he had received medical treatment for his wound in a week or so he could have lived through it. I would have liked to have believed the Camp Commander; however, I cannot and will not believe a Communist under any circumstance.

Due to my military training (Ranger School, Special Forces, etc.) I was totally prepared for the physical aspects of captivity, but on the other hand I was not prepared for the mental aspects. They did not have to dwell much on physical mistreatment for the survival situation we were in was as severe as any torture they could have given us. I was locked in a 4' x 8' x 5' hole in the ground for thirty days without bath or toilet privileges and fed twice a day. This was punishment for an attempted escape on the part of another man. The hardest thing to cope with during the entire ordeal was the mental anguish—the isolation, inactivity and uncertainty.

I very strongly believe that there are American survivors still being held in Viet Nam. I have no direct evidence of this, but I have reasons to believe so.

TITLE 37—US CODE

MILITARY

§ 555. Secretarial review

(a) When a member of a uniformed service entitled to pay and allowances under section 552 of this title has been in a missing status, and the official report of his death or of the circumstances of his absence has not been received by the Secretary concerned, or his designee, may—

- (1) if the member can reasonably be presumed to be living, direct a continuance of his missing status; or
- (2) make a finding of death.

(b) When a finding of death is made under subsection (a) of this section, it shall include the date death is presumed to have occurred for the purpose of—

- (1) ending the crediting of pay and allowances;
- (2) settlement of accounts; and
- (3) payment of death gratuities.

That date is—

(A) the day after the day on which the 12-month period in a missing status ends; or

(B) if the missing status has been continued under subsection (a) of this section, the day determined by the Secretary concerned, or his designee.

(c) For the sole purpose of determining status under this section, a dependent of a member on active duty is treated as if he were a member. Any determination made by the Secretary concerned, or his designee, under this section is conclusive on all other departments and agencies of the United States. This subsection does not entitle a dependent to pay, allowances, or other compensation to which he is not otherwise entitled. Added Pub.L. 89-554, § 5(b), Sept. 6, 1966, 80 Stat. 628.

§ 556. Secretarial determinations

(a) The Secretary concerned, or his designee, may make any determination necessary to administer this chapter and, when so made, it is conclusive as to—

- (1) death or finding of death;
- (2) the fact of dependency under this chapter;
- (3) the fact of dependency for the purpose of paying six months' death gratuities authorized by law;
- (4) the fact of dependency under any other law authorizing the payment of pay, allowances, or other emoluments to enlisted members of the armed forces, when the payments are contingent on dependency;

(5) any other status covered by this chapter;

(6) an essential date, including one on which evidence or information is received by the Secretary concerned; and

(7) whether information received concerning a member of a uniformed service is to be construed and acted on as an official report of death.

(b) When the Secretary concerned receives information that he considers establishes conclusively the death of a member of a uniformed service, he shall, notwithstanding any earlier action relating to death or other status of the member, act on it as an official report of death. After the end of the 12-month period in a missing status prescribed by section 555 of this title, the Secretary concerned, or his designee, shall, when he considers that the information received (or a lapse of time without information), establishes a reasonable presumption that a member in a missing status is dead, make a finding of death.

(c) The Secretary concerned, or his designee, may determine the entitlement of a member to pay and allowances under this chapter, including credits and charges in his account, and that determination is conclusive. An account may not be charged or debited with an amount that a member captured, beleaguered, or besieged by a hostile force may receive or be entitled to receive from, or have placed to his credit by, the hostile force as pay, allowances, or other compensation.

(d) The Secretary concerned, or his designee, may, when warranted by the circumstances, reconsider a determination made under this chapter, and change or modify it.

(e) When the account of a member has been charged or debited with an allotment paid under this chapter, the amount so charged or debited shall be recredited to the account of the member if the Secretary concerned, or his designee, determines that the payment was induced by fraud or misrepresentation to which the member was not a party.

(f) Except an allotment for an unearned insurance premium, an allotment paid from pay and allowances of a member for the period he is entitled to pay and allowances under section 552 of this title may not be collected from the allottee as an overpayment when it was caused by delay in receiving evidence of death. An allotment payment for a period after the end of entitlement to pay and allowances is an erroneous payment or overpayment of an allotment to a dependent if he considers recovery is against equity and good conscience.

(g) For the sole purpose of determining status under this section, a dependent of a member of a uniformed service on active duty is treated as if he were a member. Any determination made by the Secretary concerned, or his designee, under this section is conclusive on all other departments and agencies of the United States. This subsection does not entitle a dependent to pay, allowances, or other compensation to which he is not otherwise entitled. Added Pub.L. 89-554, § 5(b), Sept. 6, 1966, 80 Stat. 629.

TITLE 5—US CODE

CIVILIANS

§ 5555. Agency review

(a) When an employee has been in a missing status almost 12 months and no official report of his death or the circumstances of his continued absence has been received by the head of the agency concerned, he shall have the case fully reviewed. After that review and the end of 12 months in a missing status, or after any later review which shall be made when warranted by information received or other circumstances, the head of the agency concerned or his designee may—

- (1) direct the continuance of his missing status, if there is a reasonable presumption that the employee is alive; or
- (2) make a finding of death.

(b) When a finding of death is made under subsection (a) of this section, it shall include the date death is presumed to have occurred for the purpose of the ending of crediting pay and allowances and settlement of accounts. That date is—

- (1) the day after the day on which the 12 months in a missing status ends; or

(2) a day determined by the head of the agency concerned or his designee when the missing status has been continued under subsection (a) of this section.

(c) For the purpose of determining status under this section, a dependent of an employee in active service is deemed an employee. A determination under this section made by the head of the agency concerned or his designee is conclusive on all other agencies of the United States. This section does not entitle a dependent to pay, allowances, or other compensation to which he is not otherwise entitled. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 492.)

§ 5566. Agency determinations

(a) The head of the agency concerned or his designee may make any determination necessary to administer this subchapter, and when so made it is conclusive as to—

- (1) death or finding of death;
- (2) the fact of dependency under this subchapter;
- (3) any other status covered by this subchapter;
- (4) an essential date, including one on which evidence or information is received by the head of the agency concerned;
- (5) whether information received concerning an employee is to be construed and acted on as an official report of death.

(b) When the head of the agency concerned receives information that he considers to conclusively establish the death of an employee, he shall take action thereon as an official report of death, notwithstanding an earlier action relating to death or other status of the employee. After the end of 12 months in a missing status prescribed by section 5585 of this title, the head of the agency concerned or his designee shall make a finding of death when he considers that the information received, or a lapse of time without information, establishes a reasonable presumption that an employee in a missing status is dead.

(c) The head of the agency concerned or his designee may determine the entitlement of an employee to pay and allowances under this subchapter, including credits and charges in his account, and that determination is conclusive. An account may not be charged or debited with an amount that an employee captured, beleaguered, or besieged by a hostile force may receive or be entitled to receive from, or have placed to his credit by, the hostile force as pay, allowances, or other compensation.

(d) When circumstances warrant the reconsideration of a determination made under this subchapter, the head of the agency concerned or his designee may change or modify it.

(e) When the account of an employee has been charged or debited with an allotment paid under this subchapter, the amount so charged or debited shall be recredited to the account of the employee if the head of the agency concerned or his designee determines that the payment was induced by fraud or misrepresentation to which the employee was not a party.

(f) Except an allotment for an unearned insurance premium, an allotment paid from the pay and allowances of an employee for the period he is in a missing status may not be collected from the allottee as an overpayment when payment was caused by delay in receiving evidence of death. An allotment paid for a period after the end, under this subchapter or otherwise, of entitlement to pay and allowances may not be collected from the allottee or charged against the pay of a deceased employee when payment was caused by delay in receiving evidence of death.

(g) The head of the agency concerned or his designee may waive the recovery of an erroneous payment or overpayment of an allotment to a dependent if he considers recovery is against equity and good conscience.

(h) For the purpose of determining status under this section, a dependent of an employee in active service is deemed an employee. A determination under this section made by the head of the agency concerned or his designee is conclusive on all other agencies of the United States. This section does not entitle a dependent to pay, allowances, or other compensation to which he is not otherwise entitled. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 493.)

BIOGRAPHICAL DATA OF WITNESSES

MAJ. GEN. WALTER D. DRUEN, JR.

Maj. General Walter D. Druen, Jr., is Assistant Deputy Chief of Staff, Personnel for Military Personnel, Headquarters U.S. Air Force, and Commander, Air Force Military Personnel Center, Randolph Air Force Base, Tex. The Personnel Center is responsible for implementing major Air Force-wide programs such as assignments, promotions, separations and retirements, and recreation activities.

General Druen was born on Jan. 24, 1927, in Lynchburg, Va., where he was graduated from E. C. Glass High School. He began his military career in February 1944 as a private in the U.S. Army and was released from active military service in January 1947. He then attended Virginia Polytechnic Institute.

During the Korean War, he returned to active duty in November 1950, entered the aviation cadet program, and received his pilot wings and commission as second lieutenant at Craig Air Force Base, Ala., in December 1951. General Druen then was transferred to Nellis Air Force Base, Nev., for jet fighter and bomber escort training. In April 1952 he went to Korea to serve as an F-86 Sabrejet pilot assigned to the 335th Fighter Interceptor Squadron. During his combat tour of duty, he flew 100 combat missions and was credited with damaging a Russian-built Mig-15 jet fighter.

He returned to the United States in December 1952, served briefly as a fighter gunnery instructor at Tyndall Air Force Base, Fla., and was assigned to Nellis Air Force Base, Nev., in May 1953. He remained there for seven years as an instructor for the Air Force Fighter Weapons School and as a project pilot for research and development section.

In January 1960 he was transferred to Clark Air Base, Republic of the Philippines, where he held positions as Assistant Operations Officer and later Operations Officer for the 510th Tactical Fighter Squadron. He returned to the United States, in June 1962, and was assigned as Chief, Weapons Section, 4510th Combat Crew Training Group, and later was operations officer of the 4517th Combat Crew Training Squadron at Luke Air Force Base, Ariz. General Druen attended the Armed Forces Staff College from February to June 1965.

His next assignment was as operations staff officer in the Weapons System Branch, Deputy Chief of Staff, Plans and Operations, Headquarters U.S. Air Force. During this assignment, he participated in the planning for the Replacement Training Unit Program. He was a student at the Industrial College of the Armed Forces from August 1967 to June 1968. He next reported to the 479th Tactical Fighter Wing at George Air Force Base, Calif., and served as Assistant and later Director of Operations.

In August 1969 General Druen went to Southeast Asia as Director of Operations for the 8th Tactical Fighter Wing at Ubon Royal Thai Air Force Base, Thailand. His duties there included supervision of some of the most varied air operations in Southeast Asia involving four squadrons of F-4 Phantoms and one of AC-130 Spectres, largest of the side-firing gunships. During this assignment, he logged 173 combat missions in the F-4 and received the Silver Star for gallantry in action as an F-4 forward air controller.

He returned to the United States in June 1970 and became Commander of the 23d Tactical Fighter Wing at McConnell Air Force Base, Kans. General Druen assumed command of the 1st Tactical Fighter Wing at MacDill Air Force Base, Fla., in November 1971.

General Druen was assigned as Chief, Air Section, Military Assistance Advisory Group, Iran, in June 1972. In June 1974, he assumed duties as Deputy Assistant, Deputy Chief of Staff, Personnel for Military Personnel, and Deputy Commander Air Force Military Personnel Center, at Randolph Air Force Base, Tex. In March 1975, General Druen became Assistant Deputy Chief of Staff, Personnel for Military Personnel and Commander of the Air Force Military Personnel Center.

Besides the Silver Star, his decorations and awards include the Distinguished Service Medal, Legion of Merit, Distinguished Flying Cross with 2 oak leaf

clusters, Meritorious Service Medal, Air Medal with 14 oak leaf clusters, and Air Force Commendation Medal with 1 oak leaf cluster. Since receiving his pilot wings, General Druen has been associated almost continuously with tactical fighter aircraft. He has flown more than 4,000 hours in various types of aircraft including the F-4, F-5, F-100, F-104, F-105, F-86, F-80, and B-26.

General Druen is married to the former Audree Harriet Peterson of Salt Lake City, Utah. They have two children: Radford and Ann.

He was promoted to the grade of major general effective July 1, 1975, with date of rank Oct. 1, 1972.

COL. CHESTER J. BOBINSKI, JR.

Colonel Chester J. Bobinski, Jr. was born in Waterbury, Connecticut, 27 August 1928. Connecticut public school education terminated on his entry into the United States Maritime Service in 1944 and included service in France, Egypt, North Africa, India and South America.

Colonel Bobinski enlisted in the U.S. Army in 1946 and was commissioned a Second Lieutenant, Infantry, in August 1951 upon graduation from the Officer Candidate School, Fort Benning, Georgia. He is a graduate of the Infantry Officer Advanced Course at Fort Benning, Georgia, the U.S. Army Command and General Staff College at Fort Leavenworth, Kansas and the U.S. Army Language School, Monterey, California. He was integrated into the Regular Army in 1965 and promoted to the grade of Colonel in March 1972.

Colonel Bobinski's assignments have included command, operational and staff positions providing a broad general background. His language background resulted in detached service with the Department of State in 1956-57 to assist in processing Hungarian refugees from Yugoslavia. Overseas tours of duty included Japan, European, Korea and Vietnam. Following a tour of duty as the Adjutant General at the United States Military Academy, he was appointed as the Special Assistant, Department of the Army, for Prisoner of War and Missing in Action Affairs. In this position he was responsible for developing and coordinating the Army plan for repatriation of prisoners of war and to maintain continuous liaison with the next of kin of those service members who did not return.

In May 1973, Colonel Bobinski assumed the duty of Director, Casualty Affairs for the Department of the Army. In this capacity he continues his liaison with the MIA next of kin, and serves as the Department of the Army Point of Contact to the Department of Defense Task Force for PW/MIA Affairs.

In August 1975, a major reorganization resulted in a merger of Casualty and Memorial Affairs Directorates with Colonel Bobinski assuming directorship. He is married to the former Patricia A. Dolven, and has three daughters attending college.

COL. RAYMOND C. SCHRUMP

Colonel Schrump was captured May 23, 1968 in Tay Ninh Province near Saigon. He was the senior prisoner of war in Cambodia. Colonel Schrump presently resides in Fayetteville, North Carolina and is engaged as a general service contractor for the Department of Defense.

DERMOT G. FOLEY

Mr. Foley, a New York attorney, is the brother of Colonel Brendan P. Foley, U.S.A.F., who has been missing-in-action in Southeast Asia since November 24, 1967. He is the Legal Advisor of the National League of Families of American Prisoners and Missing in Southeast Asia and has represented POW/MIA family members who were the plaintiffs in *McDonald v. McLucas and Orone v. U.S.* He has also represented family members and the National League in *Herman v. Middendorf*.

Mr. Foley received his undergraduate and his law degrees from Columbia University. After some years of practice with major New York firms, he served in 1962 and 1963 as Special Law Assistant to the Board of Justices of the Supreme Court of the State of New York. Thereafter, and to date, he has been a partner in the New York law firm of Kaplan, Kilshelmer & Foley as a litigation

KAREN L. MARTIN

Mrs. Martin's husband's status review hearing was one of the first to be held after the court decision permitting next of kin to be present at hearings with legal counsel and to present evidence. She hired two lawyers and a court reporter for the hearing at her own expense and traveled extensively in the United States gathering information from witnesses. Mrs. Martin is the only next of kin to date who has fought a reclassification and won continued missing status for her husband. Her lawyers were successful in getting produced for the hearing, as evidence to support continued missing status, a classified report in the files of the JORC entitled "Sighting of three U.S. military POW's", in Cambodia shortly after Captain Martin and three other military men became missing in that country. The Randolph Air Force Base Casualty Office previously had reported they had no knowledge of such a sighting.

Mrs. Martin was asked to testify before the committee regarding her husband's status review, the fairness of the procedures and why she felt it was necessary to appear personally at the hearing with legal counsel to protect her husband's interests.

MR. GAVIN LETTS

[Lawyer who represented Mrs. Karen Martin at the Year-and-a-Day mandatory case review to consider the MIA status of her husband, Capt. Martin, USAF.]

Mr. Letts traveled twice to Randolph Air Force Base in connection with his preliminary investigation into the case. His principal concerns were that information had been withheld from the personnel files at Randolph, that sighting reports indicated the possibility that one or both of the aviators had survived their crash (the report referred to has been discounted both as a fabrication and as being totally improbable), and that there was no evidence that the men had not ejected or otherwise survived (despite no chutes and no beepers).

An impartial board was convened and concluded that both men should be continued in MIA status because of a lack of positive evidence of their demise. Enemy radio broadcasts stated that the aviators were charred (or consumed) in the crash. Although the date mentioned in the broadcasts did not agree with the actual date of the crash, theirs was the only U.S. aircraft shot down in that relative time frame. Shortly after the board continued the MIA status of both men, the wife of the Weapons System Officer (WSO) requested another review and suggested that her husband be presumed dead. Her action was strongly contested by her in-laws, but her rights as primary next of kin prevailed and her husband (Capt. James) was presumed dead.

ANITA C. LAUVE

Anita C. Lauve was born on January 21, 1914 in Upper Montclair, New Jersey. She attended schools in France, Switzerland, and Austria for a period of eight years, returning to the United States in 1932.

Ms. Lauve graduated from the Peabody Conservatory in Baltimore, and obtained a Bachelor of Science degree from Johns Hopkins University. During World War II, she served in Italy with the American Red Cross.

After joining the American Foreign Service in 1945, she served as Assistant Cultural Attaché at the American Embassy in Paris (1946-1951); as Political Officer in Saigon (1954-1956); and as Economic Officer in New Delhi (1959-1960).

Ms. Lauve resigned from the Foreign Service in 1961, and since then has been a consultant to the Rand Corporation. In that capacity, and under a brief personal contract with the Defense Department, Ms. Lauve prepared studies on *The Origins and Operations of the International Control Commission in Laos and Vietnam*; *Prisoners of War in Indochina*; *Regroupment, Withdrawals, and Transfers—Vietnam: 1954-1955, Part I*; *Regroupment, Withdrawals, and Transfers—Vietnam: 1954-1955, Part II*; *Graves Registration Operations in Indochina Following the 1954 Geneva Conference*; *Trotka on Trial—Control or Compromise: A study of the implementation and supervision of the Geneva settlements of 1954 and 1962 in Indochina*.